No. 2525

United States

Circuit Court of Appeals

For the Ninth Circuit.

PHOENIX SECURITIES COMPANY, a Corporation,

Plaintiff in Error,

vs.

M. E. DITTMAR,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the Northern District of California, Second Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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In the Circuit Court of the United States, in and for the Ninth Circuit, Northern District of California.

Action No. 14,982.

M. E. DITTMAR,

Plaintiff,

vs.

PHOENIX SECURITIES COMPANY, a Corporation,

Defendant.

Fourth Amended Complaint.

Now comes plaintiff above named, and with leave of Court first had and obtained, files this his fourth amended complaint in the above-entitled matter, and for cause of action against said defendant alleges:

I.

That at all the times herein mentioned defendant Phoenix Securities Company was, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of Maine, with its principal place of business at the City of New York, State of New York.

II.

That some time prior to the first day of May, 1907, defendant, who was then the owner of all that certain group of mines known as the Summit Consolidated Group of Mines, the Graves Consolidated Group of Mines, and the North Mammoth Extension Group of Mines, all situate, lying and being

in Sections 20 and 30, Township 34 North, Range 5 West, M. D. M., in the County of Shasta, State of California, and generally known as the Summit and Graves property, made and entered into an agreement with plaintiff by the terms of which said agreement defendant did authorize plaintiff to find a purchaser for the aforesaid group of mines; and [1*] defendant did further agree that if and when plaintiff should find a purchaser for the aforesaid group of mines who should be ready, willing and able to purchase the aforesaid group of mines for the sum of not less than Seventy-five Thousand ($75,000.00) Dollars net to defendant, and payable upon such terms as might be agreeable and satisfactory to defendant, that defendant would, upon the completion and consummation of such sale, pay to plaintiff on account of the services of plaintiff in furnishing such purchaser to defendant such sum of money in excess of said sum of Seventy-five Thousand ($75,000.00) Dollars as said group of mines might be sold by defendant to such purchaser so furnished by plaintiff.

III.

That pursuant to the aforesaid authorization and agreement and in performance thereof, plaintiff did undertake to find a purchaser for the aforesaid group of mines, and on or about the first day of May, 1907, plaintiff did discover a prospective purchaser for said properties and did introduce and bring to defendant, as such purchaser, a certain corporation known as Stauffer Chemical Company,

*Page-number appearing at foot of page of original certified Record.

a person who was then and there willing, able and ready to purchase the aforesaid group of mines from defendant, and did then and there agree to purchase the same and to pay therefor the sum of Eighty-five Thousand ($85,000.00) Dollars, provided terms of payment of said sum of Eighty-five Thousand ($85,000.00) Dollars could be arranged satisfactory to defendant and to said Stauffer Chemical Company.

IV.

That subsequently and on or about the 1st day of February, 1908, defendant and said Stauffer Chemical Company did arrange terms of payment of said purchase price of Eighty-five Thousand ($85,000.00) Dollars satisfactorily to defendant and **[2]** said Stauffer Chemical Company; and pursuant to said terms of sale and purchase defendant did sell and convey to said Stauffer Chemical Company the aforesaid group of mines; that plaintiff is informed and believes, and on such information and belief alleges that said Stauffer Chemical Company has fully complied with all the terms and conditions of said sale.

V.

That upon the completion and consummation of said sale as hereinabove set forth, there became due and payable to plaintiff the sum of Ten Thousand ($10,000.00) Dollars; that although frequently thereunto demanded by plaintiff, defendant has failed, neglected and refused, and still fails, neglects and refuses to pay to plaintiff said sum of Ten Thousand ($10,000.00) Dollars, or any part thereof, and

the whole of said sum of Ten Thousand ($10,000.00) Dollars is due, owing and unpaid by defendant to plaintiff.

VI.

That plaintiff has duly performed all the conditions and terms required on his part to be performed in and by the terms of the aforesaid authorization and agreement.

And further complaining of defendant, and as and for a second cause of action, plaintiff alleges:

I.

That at all the times herein mentioned defendant Phoenix Securities Company was, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of Maine, with its principal place of business at the City of New York, State of New York.

II.

That some time prior to the first day of May, 1907, defendant, [3] who was then the owner of all that certain group of mines known as the Summit Consolidated Group of Mines, the Graves Consolidated Group of Mines, and the North Mammoth Extension Group of Mines, all situate, lying and being in Sections 20 and 30, Township 34 North, Range 5 West, M. D. M., in the County of Shasta, State of California, and generally known as the Summit and Graves property, made and entered into an agreement with plaintiff, by the terms of which said agreement defendant did authorize plaintiff to find a purchaser for the aforesaid group of mines who would be ready, willing and able

to purchase said group of mines from defendant upon such terms and conditions as might subsequently, by means of negotiations to be had between defendant and such prospective purchaser, be agreed upon between defendant and such prospective purchaser.

III.

That pursuant to the aforesaid authorization and agreement, and in performance thereof plaintiff did, on or about the first day of May, 1907, discover a prospective purchaser for said properties and did introduce and bring to defendant said certain prospective purchaser, to wit, the Stauffer Chemical Company, a corporation, who was then and there a person able, willing and ready to purchase said group of mines, and did then and there agree to purchase the same for the sum of Eighty-five Thousand Dollars ($85,000.00), provided that the aforesaid group of mines might be purchased by said Stauffer Chemical Company from defendant upon such terms and conditions as might be satisfactory to both said Stauffer Chemical Company and defendant.

IV.

That subsequently and on or about the first day of February, 1908, said Stauffer Chemical Company and defendant did [4] arrange and agree upon the terms and conditions of the sale and purchase of the aforesaid group of mines, and pursuant to said terms of sale and purchase, defendant did sell and convey to said Stauffer Chemical Company the aforesaid group of mines for the agreed price

of Eighty-five Thousand Dollars ($85,000.00); that plaintiff is informed and believes, and on such information and belief alleges that said Stauffer Chemical Company has fully complied with all the terms and conditions of said sale.

V.

That plaintiff did expend much time, skill and money in and about the work and services rendered to defendant in the securing of said Stauffer Chemical Company as a purchaser for the aforesaid group of mines; that said Stauffer Chemical Company was secured as a purchaser for the aforesaid group of mines solely through the labor, services, skill and expenditures of plaintiff; that the reasonable value of said work, services, skill and expenditures, as hereinabove set forth, is the sum of Ten Thousand ($10,000.00) Dollars.

VI.

That although frequently thereunto demanded by plaintiff, defendant has failed to pay said sum of Ten Thousand Dollars ($10,000.00), or any part thereof, and the whole of said sum remains due, owing and unpaid to plaintiff.

VII.

That plaintiff has duly performed all the conditions and terms required on his part to be performed in and by the terms of the aforesaid authorization and agreement.

And further complaining of defendant, and as and for a third cause of action, plaintiff alleges: [5]

I.

That at all the times herein mentioned defendant

Phoenix Securities Company was, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of Maine, with its principal place of business at the City of New York, State of New York.

II.

That some time prior to the first day of May, 1907, defendant made and entered into an agreement with plaintiff, in and by the terms of which said agreement, defendant did authorize plaintiff to find a purchaser for that certain group of mines known as the Summit Consolidated Group of Mines, the Graves Consolidated Group of Mines, and the North Mammoth Extension Group of Mines, all situate, lying and being in Sections 20 and 30, Township 34 North, Range 5 West, M. D. M., in the County of Shasta, State of California, and generally known as the Summit and Graves Property, then owned by defendant, and defendant did further agree that defendant would pay to plaintiff if and when plaintiff should find a purchaser for the aforesaid group of mines who was ready, willing and able to purchase of defendant the aforesaid group of mines, defendant would pay to plaintiff as and for a compensation a commission for the services of plaintiff in finding such purchaser ten (10) per cent of such sum of money as defendant might thereafter actually receive in cash and money on account of the sale to such prospective purchaser of the aforesaid group of mines.

III.

That pursuant to the aforesaid authorization and

agreement and in performance thereof, plaintiff did undertake to find a purchaser for said group of mines, and on or about the first day of May, 1907, plaintiff did discover a prospective purchaser for said **[6]** properties and did introduce and bring to defendant, as such purchaser, a certain corporation known as Stauffer Chemical Company, a person who was then and there willing, able and ready to purchase the aforesaid group of mines from defendant, and did then and there agree to purchase the same and to pay therefor the sum of Eighty-five Thousand ($85,000.00) Dollars.

IV.

That subsequently and on or about the first day of February, 1908, defendant did sell and convey to said Stauffer Chemical Company the aforesaid group of mines, and did arrange the terms of payment satisfactorily to defendant as follows: That plaintiff is informed and believes, and on such information and belief alleges that of said sum of Eighty-five Thousand ($85,000.00) Dollars defendant has received from said Stauffer Chemical Company the sum of Forty Thousand ($40,000.00) Dollars in cash and money which has been actually paid prior to the date of the filing of this complaint, and the further sum of cash and money as hereinafter set forth; that the balance of Forty-five Thousand ($45,000.00) Dollars is due and payable out of the smelter returns which are to arise from the working and operation of the aforesaid group of mines, and will be paid in future according to the terms and conditions of that certain instrument,

dated the 5th day of February, 1908, in writing between defendant and the Summit Copper Company, a corporation organized and existing under the laws of the State of Maine, and which said last-named corporation, for and on behalf of said Stauffer Chemical Company, did undertake to pay said balance of Forty-five Thousand ($45,000.00) Dollars on account of the purchase price of the aforesaid group of mines; that in and by the terms of said last named agreement said Summit Copper Company [7] has agreed to pay to defendant on or after the first day of January, 1908, the sum of fifty (50) cents on each ton of ore when delivered or shipped, until the amount so paid to defendant shall amount to the sum of Forty-five Thousand ($45,000.00) Dollars; that plaintiff is informed and believes, and on such information and belief alleges that of said sum of Forty-five Thousand ($45,000.00) Dollars there has been paid by said Summit Copper Company to defendant, the sum of Ten Thousand ($10,000.00) Dollars, more or less, leaving a balance due of the sum of Thirty-five Thousand ($35,000.00) Dollars, more or less; that the total amount of cash and money thus received by defendant from said Stauffer Chemical Company and said Summit Copper Company in cash and money on account of the purchase price of said group of mines is, as plaintiff is informed and believes, the sum of Fifty Thousand ($50,000.00) Dollars, more or less; that plaintiff is informed and believes, and on such information and belief alleges that said Stauffer Chemical Company and said Summit Copper Company have,

and each of them has, fully complied with all the terms and conditions of said sale.

V.

That upon the completion and consummation of said sale and of the subsequent payment of the sum of Fifty Thousand ($50,000.00) Dollars, more or less, in cash and money, as hereinabove set forth, there became due and payable to plaintiff the sum of Five Thousand ($5,000.00) Dollars, more or less; that although frequently thereunto demanded by plaintiff, defendant has failed, neglected and refused, and still fails, neglects and refuses to pay to plaintiff said sum of Five Thousand ($5,000.00) Dollars, or any part thereof, and the whole of said sum of Five Thousand ($5,000.00) Dollars is due, owing and unpaid [8] by defendant to plaintiff.

VI.

That plaintiff has duly performed all the conditions and terms required on his part to be performed in and by the terms of the aforesaid authorization and agreement.

WHEREFORE, plaintiff prays judgment against said defendant for the sum of Ten Thousand ($10,000.00) Dollars together with interest thereon from the first day of February, 1908, to the date hereof, together with his costs of suit herein, and together with such other and further relief as may be meet in the premises.

MORRISON & BROBECK,
PERRY & KERRIGAN,
Attorneys for Plaintiff.

State of California,
City and County of San Francisco,—ss.

M. E. Dittmar, being first duly sworn, deposes and says: That he is the plaintiff in the above-entitled action; that he has read the foregoing fourth amended complaint, and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

M. E. DITTMAR.

Subscribed and sworn to before me this 21st day of March, 1911.

[Seal] R. B. TREAT,
Notary Public in and for the City and County of San Francisco, State of California. **[9]**

Receipt of a copy of the within Complaint is hereby admitted this 21st day of March, 1911.

L. A. REDMAN,
Attorney for Defendant.

[Endorsed]: Filed Mar. 21, 1911. Southard Hoffman, Clerk. By W. B. Maling, Deputy Clerk. **[10]**

In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

M. E. DITTMAR,
Plaintiff,

vs.

PHOENIX SECURITIES COMPANY (a Corporation),
Defendant.

Demurrer to Fourth Amended Complaint.

Comes now the defendant above-named and demurring unto the fourth amended complaint, for ground of demurrer, specifies that said fourth amended complaint does not state facts sufficient to constitute a cause of action.

Demurring unto the first count or cause of action in said fourth amended complaint, for ground of demurrer, defendant specifies:

1. That said first count does not state facts sufficient to constitute a cause of action.

2. That the cause of action stated in said first count is barred by the provisions of subdivision 1 of Section 339 of the Code of Civil Procedure of the State of California.

3. That said first count is uncertain in the following particulars:

(a) It cannot be ascertained therefrom if the defendant has received any sum or amount of money for the properties referred to in said count in excess of the sum of $75,000.

(b) It cannot be ascertained therefrom if the defendant has received any sum of money for the properties referred to. [11]

(c) It cannot be ascertained therefrom if the Stauffer Chemical Company has paid to the defendant the sum of $85,000, or any sum.

(d) It cannot be ascertained therefrom what time was given the plaintiff to find a purchaser of the mines for the defendant, or if the plaintiff found

a purchaser within the time specified in the agreement.

(e) It cannot be ascertained therefrom if the sale of the properties has been completed and consummated.

(f) It cannot be ascertained therefrom when the sale of the properties was completed or consummated.

(g) It cannot be ascertained therefrom what are the terms or conditions of the alleged sale from the defendant to the Stauffer Chemical Company referred to in paragraph IV.

(h) It cannot be ascertained therefrom what terms were arranged for the payment of the sum of $85,000.

(i) It cannot be ascertained therefrom what are the terms or conditions referred to in paragraph VI.

4. That said first count is unintelligible in the same respects that it is alleged to be uncertain.

5. That said first count is ambiguous in the same respects that it is alleged to be uncertain.

Demurring unto the second count or cause of action in said fourth amended complaint, for ground of demurrer, defendant specifies:

1. That said count does not state facts sufficient to constitute a cause of action.

2. That the cause of action stated in said second count is barred by the provisions of subdivision 1 of Section [12] 339 of the Code of Civil Procedure of the State of California.

3. That said second count is uncertain in the following particulars:

(a) It cannot be ascertained therefrom if the cause of action therein attempted to be stated is based upon an express or an implied contract.

(b) It cannot be ascertained therefrom if there was any agreement as to the payment of plaintiff for finding a purchaser of the properties.

(c) It cannot be ascertained therefrom if the defendant agreed to pay plaintiff the sum of $10,000 or any sum, for securing a purchaser of the property.

(d) It cannot be ascertained therefrom if the plaintiff requested the defendant to perform the alleged work and services referred to.

(e) It cannot be ascertained therefrom what are the terms or conditions of the alleged sale from the defendant to the Stauffer Chemical Company.

(f) It cannot be ascertained therefrom how much time or skill or money was expended by the plaintiff in and about the alleged work and services.

(g) It cannot be ascertained therefrom what are the conditions or terms referred to in paragraph VII.

4. That said second count is unintelligible in the same respects that it is alleged to be uncertain.

5. That said second count is ambiguous in the same respects that it is alleged to be uncertain.

Demurring unto the third count or cause of action in said fourth amended complaint for ground of demurrer, defendant specifies: [13]

1. That said third count does not state facts sufficient to constitute a cause of action.

2. That the cause of action stated in said third count is barred by the provisions of subdivision 1 of

Section 339 of the Code of Civil Procedure of the State of California.

3. That said third count is uncertain in the following particulars:

(a) It cannot be ascertained therefrom what time was given the plaintiff to find a purchaser for the properties referred to.

(b) It cannot be ascertained therefrom if the plaintiff found a purchaser for the properties within the time given him to do so.

(c) It cannot be ascertained therefrom with whom the Summit Copper Company agreed to pay to defendant the sum of fifty cents on each ton of ore shipped or delivered.

(d) It cannot be ascertained therefrom in what manner plaintiff in this action is affected by any agreement of the defendant and the Summit Copper Company.

(e) It cannot be ascertained therefrom what are the terms or conditions of the sale alleged to have been fully complied with by the Stauffer Chemical Company and the Summit Copper Company.

(f) It cannot be ascertained therefrom what are the conditions or terms alleged to have been performed by the plaintiff.

4. That said third count is unintelligible in the same respects that it is alleged to be uncertain.

5. That said third count is ambiguous in the same [14] respects that it is alleged to be uncertain.

WHEREFORE defendant prays to be hence dismissed with its costs.

L. A. REDMAN,
Attorney for Defendant.

Service of the within Demurrer admitted this 14th day of April, 1911.

PERRY & DAILEY,
PERRY & KERRIGAN,
MORRISON & BROBECK,
Attorneys for Pl.

[Endorsed]: Filed Apr. 14, 1911. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk. [15]

At a stated term, to wit, the March term, A. D. 1911, of the Circuit Court of the United States of America of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the City and County of San Francisco, on Monday, the 5th day of June, in the year of our Lord one thousand nine hundred and eleven. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 14,982.

M. E. DITTMAR

vs.

PHOENIX SECURITIES CO.

Order Overruling Defendants' Demurrer to Fourth Amended Complaint.

Defendants' demurrer to the fourth amended complaint and motions to strike out, heretofore heard and submitted being fully considered and the Court having rendered its oral opinion thereon it was ordered that said demurrer be and the same is hereby

overruled and that said motions to strike out be and the same are hereby denied. [16]

In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

Number 14,982.

M. E. DITTMAR,

Plaintiff,

vs.

PHOENIX SECURITIES COMPANY (a Corporation),

Defendant.

Answer to Fourth Amended Complaint.

Comes now the defendant above-named and answering unto plaintiff's fourth amended complaint herein denies and alleges as follows:

I.

1. Answering unto the first count or alleged cause of action in said complaint defendant denies that sometime prior to the first day of May, 1907, or at any time it made and entered into or made or entered into an or any agreement with plaintiff by the terms or any term of which alleged or any agreement defendant did authorize plaintiff to find a purchaser for the group of mines referred to in the fourth amended complaint herein or for any portion thereof or for any property whatsoever, and denies that the defendant did further or at all agree that if and when or if or when or upon any condition or at any time plaintiff should find a purchaser for the group of

mines referred to in said complaint who should be ready, willing and able or ready or willing or able to purchase said group of mines or any other property for the sum of not less than Seventy-five Thousand Dollars ($75,000) net to the defendant, or for any sum and payable or payable upon such or any term or terms as might be agreeable and satisfactory [17] or either thereof to the defendant or any person or upon any term or terms that the defendant would upon the completion and consummation or either thereof of such sale, or in any event, pay to plaintiff on account of the alleged services of plaintiff in furnishing such alleged purchaser to defendant or for any service or services such sum of money in excess of said sum of Seventy-five Thousand Dollars ($75,000) or any sum as said group of mines or any portion thereof or any property might be sold by the defendant or any person to such purchaser furnished by plaintiff or to any person or that defendant agreed to pay plaintiff any sum of money whatever in any event.

2. Defendant denies that pursuant to the alleged authorization and agreement or either thereof or pursuant to any authorization or agreement, and in performance thereof, or in performance thereof, or otherwise, plaintiff did undertake to find a purchaser for the aforesaid group of mines or for any property and on or about the first day of May, 1907, or on and about the first day of May, 1907, or at any time, plaintiff did discover a prospective or any purchaser for said or any property and did introduce and bring to defendant or did introduce or bring to defendant as

such purchaser or otherwise a certain or any corporation or person known as Stauffer Chemical Company or otherwise, a person who was then and there or then or there or at any time or at any place willing, able and ready or willing or able or ready to purchase the aforesaid group of mines or any property from defendant, and did then and there or did then or there agree to purchase the same or any property and to pay or to purchase the same or any property or to pay therefor the sum of Eighty-five Thousand Dollars ($85,000) or any sum, provided terms of payment of said sum of eighty-five thousand dollars ($85,000) or any sum could be arranged satisfactory to the defendant and to said Stauffer Chemical [18] Company, or either thereof, or in any event.

3. Defendant denies that on or about or on and about the first day of February, 1908, the defendant and the Stauffer Chemical Company, or either of them, did arrange terms of payment of the alleged purchase price of Eighty-five Thousand Dollars ($85,000) satisfactorily to defendant and said Stauffer Chemical Company, or either thereof. Defendant denies that pursuant to the alleged terms of purchase and sale, or either thereof or pursuant to any term or terms defendant did sell and convey, or sell or convey to said Stauffer Chemical Company the aforesaid group of mines or any property. Defendant denies that said Stauffer Chemical Company has fully complied with all the conditions and terms of said alleged sale and denies that said Stauffer Chemical Company has fully or at all complied with all the terms and conditions or with all or any term

or terms or condition or conditions of the alleged sale of the group of mines referred to in the fourth amended complaint to said Stauffer Chemical Company.

4. Defendant denies that upon the completion and consummation or upon completion or consummation of said alleged sale or otherwise or in any event there became due and payable or due or payable to plaintiff the sum of Ten Thousand Dollars ($10,000) or any sum. And defendant denies that it has failed, neglected and refused or has failed or neglected or refused and still or still or at all fails, neglects and refuses, or either thereof to pay plaintiff any sum of money due from said defendant to the plaintiff. And defendant denies that the whole of said sum of Ten Thousand Dollars ($10,000) or any portion thereof is due, owing and unpaid or due or owing or unpaid by the defendant to the plaintiff. [19]

5. Defendant denies that plaintiff has duly performed all the conditions and terms, or either thereof, required on his part to be performed in and by or in or by the terms of the alleged authorization and agreement or either thereof, and defendant denies that there is or was any such authorization or agreement.

6. Further answering said first cause of action and as a separate defense thereto defendant alleges that said cause of action is barred by the provisions of subdivision 1 of section 339 of the Code of Civil Procedure of the State of California.

7. Further answering said first cause of action defendant alleged that said cause of action is barred

by the provisions of subdivision 1 of section 337 of the Code of Civil Procedure of the State of California.

8. Further answering said first cause of action and as a separate defense thereto defendant alleges that the plaintiff was employed by the Stauffer Chemical Company, a corporation, the alleged purchaser of the property referred to in the fourth amended complaint and plaintiff acted for and on behalf of said Stauffer Chemical Company and as its agent for a compensation agreed upon between said Stauffer Chemical Company and plaintiff in negotiating on behalf of said Stauffer Chemical Company for the purchase of the property referred to in the fourth amended complaint. That if plaintiff purported to act as the agent of the defendant, then plaintiff was acting or purporting to act as the agent of both the seller and the alleged purchaser of said property in negotiating for the sale and purchase thereof. That said defendant did not know of nor did it consent to such double agency. [20]

II.

Answering the second cause of action to plaintiff's fourth amended complaint defendant denies and alleges as follows:

1. Defendant denies that some time prior to the first day of May, 1907, or at any time it made and entered into or made or entered into an or any agreement with plaintiff by the terms of which alleged or any agreement defendant did authorize plaintiff to find a purchaser for the group of mines referred to in the fourth amended complaint herein

or any property who would be ready, willing and able, or ready or willing or able to purchase said group of mines or any property from the defendant or from any person upon such terms and conditions or upon such or any term or terms or condition or conditions as might subsequently or at any time by means of negotiations to be had between defendant and such prospective purchaser or between said defendant or such prospective purchaser or any person, or by any means, be agreed upon between defendant and such prospective purchaser or any person.

2. Defendant denies that pursuant to the alleged authorization and agreement or either thereof, or otherwise and in performance thereof, or in performance thereof or otherwise plaintiff did on or about or on and about the first day of May, 1907, or at any time discover a prospective or any purchaser for said or any property, and did introduce and bring to the defendant or did introduce or bring to the defendant said certain prospective purchaser, to wit, the Stauffer Chemical Company, a corporation, or any person, who was then and there or then or there able and willing and ready, or able or willing or ready to purchase said group of mines or [21] any property and did then and there or did then or there agree to purchase the same or any property for the sum of Eighty-five Thousand Dollars, or any sum, provided that the aforesaid group of mines or any property might be purchased by said Stauffer Chemical Company from defendant upon such terms and conditions or upon such or any term or

terms or condition or conditions as might be satisfactory to both said Stauffer Chemical Company and the defendant or either thereof, or upon any condition.

3. Defendant denies that on or about or on and about the first day of February, 1908, the Stauffer Chemical Company and the defendant or either of them did arrange and agree or arrange or agree upon the terms and conditions or upon the term or terms or condition or conditions of the alleged sale and purchase or either thereof of the said group of mines, and defendant denies that pursuant to the said or any term or terms of sale and purchase or either thereof the defendant did sell and convey or sell or convey to said Stauffer Chemical Company the aforesaid group of mines or any property for the agreed price of Eighty-five Thousand Dollars ($85,000) or for any price. Defendant denies that said Stauffer Chemical Company has fully complied with all the terms and conditions of the alleged sale and denies that the Stauffer Chemical Company has complied with all or any of the terms and conditions or either thereof of the alleged sale of said property to it.

4. Defendant denies that the plaintiff did spend much time, skill and money or much or any time or skill or money in and about or in or about the alleged work and services or work or services alleged to have been rendered to the defendant in securing the said Stauffer Chemical Company as a purchaser for said group of mines or in any work or service for defendant. And defendant denies that said

Stauffer Chemical **[22]** Company was secured as a purchaser for the said group of mines solely or at all through the labor, services, skill and expenditures or through the labor or service or services or skill or expenditure or expenditures of the plaintiff. And defendant denies that the reasonable or any value of the alleged work, services, skill and expenditures or either thereof as set forth in the second cause of action or otherwise is the sum of Ten Thousand Dollars ($10,000) or any sum.

5. Defendant denies that the whole or any part of the sum of Ten Thousand Dollars ($10,000) or any sum remains or is due, owing and unpaid or due, or owing or unpaid to plaintiff.

6. Defendant denies that plaintiff has performed all or any of the conditions and terms or conditions or terms alleged to have been required on his part to be performed in and by or in or by the terms of the alleged authorization and agreement or either thereof.

7. Further answering said second cause of action and as a separate defense thereto defendant alleges that said cause of action is barred by the provisions of subdivision 1 of section 339 of the Code of Civil Procedure of the State of California.

8. Further answering said second cause of action defendant alleges that said cause of action is barred by the provisions of subdivision 1 of section 337 of the Code of Civil Procedure of the State of California.

9. Further answering said second cause of action and as a separate defense thereto defendant alleges that the plaintiff was employed by the Stauffer Chem-

ical Company, a corporation, the alleged purchaser of the property referred to in the fourth amended complaint and plaintiff acted for and on behalf of said Stauffer Chemical Company and as its agent for a compensation [23] agreed upon between said Stauffer Chemical Company and plaintiff in negotiating on behalf of said Stauffer Chemical Company for the purchase of the property referred to in the fourth amended complaint. That if plaintiff purported to act as the agent of the defendant, then plaintiff was acting or purporting to act as the agent of both the seller and the alleged purchaser of said property in negotiating for the sale and purchase thereof. That said defendant did not know of nor did it consent to such double agency.

III.

Answering the third cause of action in plaintiff's fourth amended complaint defendant denies and alleges as follows:

1. Defendant denies that some time prior to the first day of May, 1907, or at any time defendant made and entered into or made or entered into an or any agreement with plaintiff in and by or in or by the terms or any term of said or any agreement defendant did authorize plaintiff to find a purchaser for that certain group of mines known as the Summit Consolidated Group of Mines, the Graves Consolidated Group of Mines, and the North Mammoth Extension Group of Mines, all situate, lying and being in Sections 20 and 30, Township 34 North, Range 5 West, M. D. M., in the County of Shasta, State of California, and generally known as the

Summit and Graves property then owned by the defendant or any part or portion of said property or any property whatsoever; and denies that defendant did further or at all agree that it would pay to plaintiff if and when or if or when plaintiff should find a purchaser for the said group of mines or any property who was ready, willing and able or ready or willing or able to purchase of defendant or any person said group of mines or any property, defendant would pay to plaintiff as and for or as or for a compensation or otherwise a commision for the services of plaintiff in finding **[24]** such purchaser or any purchaser, or for any services, ten per cent of such money as defendant might thereafter actually receive in cash and money on account of the sale or of such money as defendant might thereafter actually or at all receive in cash or money on account of the sale to such prospective or any purchaser of the aforesaid group of mines or any property or that defendant would pay to plaintiff any sum of money whatever in any event.

2. Defendant denies that pursuant to the alleged authorization and agreement or either thereof or pursuant to any authorization or agreement, and in performance thereof or in performance thereof, or otherwise, plaintiff did undertake to find a purchaser for said group of mines and on or about or on and about the first day of May, 1907, or at any time plaintiff did discover a prospective or any purchaser for said or any properties and did introduce and bring to defendant or did introduce or bring to defendant as such purchaser or otherwise a cer-

tain corporation known as Stauffer Chemical Company or any person who was then and there or then or there or at any time or at any place willing, able and ready or willing or able or ready to purchase the said group of mines or any property from the defendant and did then and there or then or there agree to purchase the same and to pay therefor or to purchase the same or to pay therefor the sum of Eighty-five Thousand Dollars ($85,000) or any sum.

3. Defendant denies that subsequently and on or about the first day of February, 1908, or subsequently or on and about the first day of February, 1908, or at any time defendant did sell and convey or sell or convey to the Stauffer Chemical Company the said group of mines, and that or that on and about or on or about the first day of February, 1908, did arrange the terms or any term of payment satisfactorily to defendant or [25] otherwise, and defendant denies that it has received from the Stauffer Chemical Company or any person the sum of Forty Thousand Dollars ($40,000) in cash and money, or either thereof which has been actually or at all paid prior to the date of the filing of the fourth amended complaint or at any time, and the further or the further sum of cash and money or either thereof as set forth in the third cause of action, or otherwise, or any sum. And defendant alleges that it has no information or belief upon the subject sufficient to enable it to answer the allegations that the sum of Forty-five Thousand Dollars ($45,000) will be paid in the future according

to the terms and conditions of the alleged instrument dated the 5th day of February, 1908, in writing between defendant and the Summit Copper Company, a corporation organized and existing under the laws of the State of Maine, and therefore and upon that ground defendant denies each and every of said allegations. And defendant denies that the Summit Copper Company did undertake for and on behalf of the Stauffer Chemical Company to pay the balance of Forty-five Thousand Dollars ($45,000) on account of the purchase price of the said group of mines. Defendant denies that of the alleged sum of Forty-five Thousand Dollars ($45,-000) there has been paid by the Summit Copper Company to the defendant or any person the sum of Ten Thousand Dollars ($10,000) more or less or any sum whatsoever, leaving a balance due of the sum of Thirty-five Thousand Dollars ($35,000) more or less or any sum less than the original alleged balance. Defendant denies that the total or any amount of cash and money or either thereof thus or at all received by the defendant from the Stauffer Chemical Company and the Summit Copper Company, or either of them in cash and money or in cash or money on account of the alleged purchase price of said group of mines is the sum of Fifty Thousand Dollars ($50,000) more or less. **[26]** Defendant denies that the Stauffer Chemical Company and the Summit Copper Company or either of them have fully or at all complied with all or any of the terms and conditions or terms or conditions of any sale of the said group of mines to the said

Stauffer Chemical Company or with all the terms and conditions or terms or conditions of the alleged or any sale.

4. Defendant denies that upon the alleged completion and consummation or either thereof of the alleged sale and of the alleged subsequent payment of the sum of Fifty Thousand Dollars ($50,000) more or less or of the subsequent or any payment of the sum of Fifty Thousand Dollars ($50,000) more or less or any sum in cash and money or either thereof as set forth in the third cause of action or otherwise or in any event there became due and payable or due or payable to plaintiff the sum of Five Thousand Dollars ($5,000), more or less, or any sum. Defendant denies that it has failed, neglected and refused or failed or neglected or refused and still fails, neglects and refuses or still or at all fails, neglects or refuses to pay plaintiff any sum which may be due plaintiff. And defendant denies that the whole of said sum of Five Thousand Dollars ($5,000) or any part of said sum or any sum of money whatsoever is due, owing and unpaid or due or owing or unpaid by the defendant to the plaintiff.

5. Defendant denies that plaintiff has performed all or any of the conditions and terms or conditions or terms alleged to have been required on his part to be performed in and by or in or by the terms of the alleged authorization and agreement or either thereof.

6. Further answering said third cause of action and as a separate defense thereto defendant alleges that said cause of action is barred by the provisions

of subdivision 1 of Section 339 of the Code of Civil Procedure of the State of California. [27]

7. Further answering said third cause of action defendant alleges that said cause of action is barred by the provisions of subdivision 1 of Section 337 of the Code of Civil Procedure of the State of California.

8. Further answering said third cause of action and as a separate defense thereto defendant alleges that the plaintiff was employed by the Stauffer Chemical Company, a corporation, the alleged purchaser of the property referred to in the fourth amended complaint and plaintiff acted for and on behalf of said Stauffer Chemical Company and as its agent for a compensation agreed upon between said Stauffer Chemical Company and plaintiff in negotiating on behalf of said Stauffer Chemical Company for the purchase of the property referred to in the fourth amended complaint. That if plaintiff purported to act as the agent of the defendant, then plaintiff was acting or purporting to act as the agent of both the seller and the alleged purchaser of said property in negotiating for the sale and purchase thereof. That said defendant did not know of nor did it consent to such double agency.

WHEREFORE, defendant prays that plaintiff take nothing by this action and that it be hence dismissed with its costs.

L. A. REDMAN,
Attorney for Defendant.

United States of America,
State of New York,
County of New York,—ss.

Richard S. Batson, being first duly sworn, deposes and says: That he is an officer of the defendant corporation in the above-entitled action, to wit, the Treasurer thereof; that he has read the foregoing answer to the fourth amended complaint and knows the contents thereof, and that the same is true [28] of his own knowledge except as to matters therein stated upon information or belief and as to such matters he believes it to be true.

RICHARD S. BATSON.

Subscribed and sworn to before me this 27th day of July, A. D. 1911.

[Seal] WALTER F. WELCH,

Notary Public in and for the County of Queens.

Certificate filed in the County of New York, State of New York.

Service of the within answer admitted this 3d day of August, 1911.

PERRY & DALEY,
MORRISON, DUNNE & BROBECK,
Attorneys for Pl.

[Endorsed]: Filed August 4, 1911. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk. [29]

In the District Court of the United States, in and for the Northern District of California, Second Division.

No. 14,982.

M. E. DITTMAR,

Plaintiff,

vs.

PHOENIX SECURITIES CO. (a Corporation),

Defendant.

Waiver of Trial by Jury.

A jury in the above-entitled action is hereby waived.

Dated December 4th, 1913.

MORRISON & BROBECK,
Attorneys for Plaintiff.
L. A. REDMAN,
Attorney for Defendant.

[Endorsed]: Filed Dec. 30, 1913. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. **[30]**

In the District Court of the United States, in and for the Northern District of California, Second Division.

No. 14,982.

M. E. DITTMAR,

Plaintiff,

vs.

PHOENIX SECURITIES COMPANY, a Corporation,

Defendant.

Judgment.

This cause having come on regularly for trial on the 4th day of December, 1913, being a day in the November, 1913, Term of said Court, before the Court and a jury of twelve men duly impaneled and sworn to try the issues joined herein: R. L. McWilliams, Esq., appearing as attorney for plaintiff and L. A. Redman, Esq., appearing as attorney for defendant. By stipulation in open Court on said day, by counsel for both sides the trial and submission of this cause to a jury was waived and the trial proceeded with to be submitted to the Court for decision without a jury; and the trial having been proceeded with on the 5th day of December, in said year and term, and oral and documentary evidence upon behalf of the respective parties having been introduced and closed and the cause having been submitted to the Court without argument on briefs to be filed; and the Court being now fully advised in the premises having ordered that judgment be entered in favor of plaintiff and against said defendant in the sum of Five Thousand ($5,000.00) Dollars and for costs:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that M. E. Dittmar, plaintiff, do have and recover of and from Phoenix Securities Company, a corporation, defendant, the sum of Five Thousand ($5,000.00) Dollars, together with his costs in this

behalf expended [31] taxed at $58.20.

Judgment entered August 26, 1914.

WALTER B. MALING,
Clerk.

A True Copy. Attest:

[Seal] WALTER B. MALING,
Clerk.

[Endorsed]: Filed Aug. 26, 1914. Walter B. Maling, Clerk. [32]

In the District Court of the United States for the Northern District of California.

M. E. DITTMAR,

Plaintiff,

vs.

PHOENIX SECURITIES COMPANY (a Corporation),

Defendant.

This case came on regularly for trial before the Court sitting without a jury, on December 4, 1913, a jury having been duly waived by written stipulation filed in the case as provided by law, Messrs. Morrison, Dunne & Brobeck and R. L. McWilliams, Esq., appearing for the plaintiff, and L. A. Redman, Esq., appearing for the defendant; whereupon the following proceedings were had:

[Testimony of A. C. Jentzen, for Plaintiff.]

A. C. JENTZEN, a witness called on behalf of plaintiff, being duly sworn, testified as follows:

I am connected with the Stauffer Chemical Com-

(Testimony of A. C. Jentzen.)

pany and have been connected with it for about twenty years. I am familiar with certain properties in Shasta County which it purchased from defendant. I know of the payments made by the Stauffer Chemical Company for those properties. The sum of $7,950.00 was paid prior to the commencement of this suit. Subsequent to the commencement of the action additional payments have been made, making in all up to to-day the sum of $51,000.

[Testimony of Charles Kunze, for Plaintiff.]

CHARLES KUNZE, a witness called on behalf of the plaintiff, being duly sworn, testified as follows: [33*—1†]

I am the manager of the Stauffer Chemical Company. I have been connected with it for fifteen years. I was connected with it in the month of December, 1906. At that time I was looking up mines for them. I recall a conversation which I had with plaintiff during the month of December, 1906. The purpose of this conversation was to find out who owned the Summit Group of mining claims. Mr. Dittmar was represented to me by people in Redding as being the man who had the Summit Group of mining claims for sale. I had been up on the Copper Belt for sometime looking around, and I found that the Summit looked pretty good, and I thought we would like to take a bond on it. I saw Mr. Dittmar and talked to him about it and he said that he was

*Page-number appearing at foot of page of original certified Record.
†Original page-number appearing at foot of page of Testimony as same appears in Certified Transcript of Record.

(Testimony of Charles Kunze.)

the agent and it could be bought for $75,000 on a bond. He did not suggest that at the first conversation, but at the second conversation I had with him, he suggested that the Phoenix Securities Company wanted $75,000, but that the property was probably worth more money, and that we make some commission out of it, he and I together; I told him that I was being taken care of by the Stauffer Chemical Company, that is, I was to have an interest in the property, and that I did not want any commission, and so he said, "Well, that is all right, but of course I want a commission," and I said, "That is perfectly natural; how much do you want?" He said "$12,500." I said, "That is too much." Finally after a day or two we decided to add $10,000 to the $75,000, making $85,000, and the bond was made for $85,000 for eighteen months. There was no understanding whereby our Company was to pay Mr. Dittmar any sum for his services. A month or two subsequent to my first conversation with him, he showed me over the properties. Meanwhile he had taken a trip to New [34—2] York. I had been around the properties before that time, all over the Copper Belt.

Cross-examination.

I was not in the employ of the Stauffer Chemical Company but I was told by Mr. Stauffer to look up mines and I could participate. I did not mention anything about this property to any officer of the Stauffer Chemical Company before I saw Mr. Dittmar. I mentioned the property to the Stauffer

(Testimony of Charles Kunze.)

people after I had been in Shasta the first time, and the first time I was in Shasta County, I did not see Mr. Dittmar. I was looking up properties which I thought they might purchase, and it was in that view of the matter that I discussed the situation with Mr. Dittmar. After talking with him on the first occasion, I told them about the Summit Group of mines, and told them that Mr. Dittmar was the agent for the mine, and told them all about it. I got the information that Mr. Dittmar was the agent from people in Redding. They told me that he was the agent for the Summit Group of Mines. I was never told that by anybody connected with the Phoenix Securities Company. All I know about it is what I was told by people in Redding. I don't really remember whether anything was said about the price at my first conversation with Mr. Dittmar. He said that New York people owned the property. I believe he said that he had sold it to them. He suggested that we raise the price to $100,000, and that he and I make $12,500 apiece, but I said, "No I don't want to do that because I am already protected by the Stauffer Chemical Company. In fact, I have an understanding with Mr. Stauffer that I am to participate in this mine, and I want to buy it as cheaply as I can." Then Mr. Dittmar said, "All right we will make [35—3] it $12,500 then." I saw Mr. Dittmar every day for two or three weeks or a month before he went to New York. Before he went [36—3½] to New York I spoke to him about the price of the mine and about the amount of his commission.

(Testimony of Charles Kunze.)

He told me $75,000 was the price net, and that he wanted to add this money and make a commission. He wanted to make it $100,000 first and then I said I did not want to do that because I wanted to buy the property as cheaply as possible, and he said then $12,500, making $87,500 the price he would ask, and I said that was too much, and I said $10,000 was plenty, and finally we agreed on $10,000, and added that to $75,000, and of course, I always understood that everything was finally understood, and there would be no back talk, or anything about it. I am entirely satisfied that this talk about a commission was before he went to New York. I did not discuss the question of commission with the officers of the Chemical Company. We simply added $10,000 to the original price. I supposed he was to get $10,000 when the money was paid. We did all our business with the New York people, with Hatch & Clute. I mean my Company did.

[Testimony of M. E. Dittmar, on His Own Behalf.]

M. E. DITTMAR, plaintiff, being duly sworn, testified as follows:

I reside at Redding, California. I have lived in this State about twenty years; about nineteen years in Redding. I am acquainted with the properties described in the complaint. I was formerly the owner of a part of these properties. I had a conversation with Mr. Charles Kunze in regard to these properties in the latter part of 1906. I should say in October or early in November. Mr. Kunze called

(Testimony of M. E. Dittmar.)

on me at my office in Redding, and asked me regarding the status and the ownership of the Summit and the Graves Group of mines, particularly in the Backbone Mining District, Shasta County, and stated that he represented the Stauffer **[37—4]** Chemical Company, and he was interested in the territory in question, and asked me if I, knowing the owners, would get from them a proposition for the sale of the properties, providing that it was on the market; and I told him that as they were not doing anything but assessment work on their location, in all probability it could be secured. I told Mr. Kunze further, that I contemplated a trip to New York in the course of a few weeks, and in all probability I could take it up to better advantage with them at that time, because the owners of the property really knew little about it there; they had secured it about a year before, and all the work they had done in the meantime was assessment work for one season, and had no one in the district particularly outside of such information as I gave them from time to time to represent their interest on the ground; in fact, there was no one on the ground at the time that Mr. Kunze called, that is no work being done and no one in direct charge of the property. After going to New York I called on Mr. Hatch of the firm of Hatch & Clute with whom I had had considerable correspondence previously regarding the property, and I knew that he was personally interested or entirely represented the Phoenix Securities people. On my first visit to his office

(Testimony of M. E. Dittmar.)

I discussed the situation generally as to the property, and told him that it was possible that a deal could be made, provided the right kind of a proposition could be secured; that the property really required quite a bit of development work as it was prospective in character, although at that time it had gained quite a little bit in its prospective importance, because it adjoined the properties of the Mammoth Copper Mining Company, which are operating very largely in that district. He asked me what [38—5] I thought could be done. I told him that if a liberal development bond was given extending over a considerable period of time, that I thought $75,000 was not an excessive price to ask for the ground under a development bond. I left him with the expectation that he would see others in interest, and let me know later on what might be done. I think that on the next day I called upon a Mr. Reif, who was President of the Corporation, but apparently he was not very much of a factor in it, but really represented the main owner, a man by the name of William Connor, who I believe at one time was a broker for the Gould interests in New York. But I left it in that state and had occasion to go to Boston where I remained three or four days, and then I returned to New York about the second week in December, 1906, and called on Mr. Hatch again, and he did not have matters in a definite shape at the time, or stated that he had been busy, or could not dispose of the matter, and it was suggested—whether I made the suggestion or he

(Testimony of M. E. Dittmar.)

made it, I do not know—that I call on Mr. Connor at his office, and he would arrange an interview for me with Mr. Connor the next day. I did this, and I discussed the matter with Mr. Connor much in the same line as I talked about the situation and the property with Mr. Hatch. Then on the day following the discussion with Mr. Connor I returned to the office of Hatch & Clute and got the situation definitely from Mr. Hatch that they would be willing to deal on an eighteen months' option for $75,000, and leaving it for me to get any profit that I could over that amount, providing I could make the arrangements with the buyers, telling me also that they had in view dealing with some other people, and he would like to have me get active in the matter as quick as possible if [39—6] the thing could be arranged. Of course, I took that with some grain of allowance, because I knew that the property was undeveloped, and that frequently people try to urge action in that manner. I returned to California early in January. I think I returned the latter part of December, but I took the matter up again in January with Mr. Kunze of the Stauffer Chemical Company, telling Mr. Kunze that the property could be had for $75,000 net to the owner, and that the term of development under that $75,000 option bond would be eighteen months. I discussed with Mr. Kunze then my status in the case and his own. I did not know whether Mr. Kunze was dealing direct for the Stauffer people or whether he was seeking to make some commission out of the deal.

(Testimony of M. E. Dittmar.)

But Mr. Kunze advised me that he was representing the Stauffer people direct, and that he would be interested in the property, and that I would only have to take care of myself so far as a commission was concerned. We discussed the bond and finally it was agreed that $10,000 to add to the price of $75,000 which the Phoenix Securities Company was not excessive, that is on an eighteen months bond they would be perfectly willing if they took the property at the end of that time to pay $10,000 additional for my services in the matter. The time devoted to the work in New York all told perhaps covered a week or at the outside ten days. I was in New York and Boston nearly two weeks. I could not say definitely what my expenses were on that trip. I have not the note-book with me, otherwise I could give you exact information. I should judge that that part that would be charged directly to the work would be $200 or $225. I had no other special business in New York. After my trip to New York I took Mr. Kunze and another representative of the buyers, [40—7] Mr. De Guigne, over the property; that was early in February. The ore in these properties was chiefly copper; the contents are copper, gold and silver, and the copper is the most valuable of the ores in that district. It requires a great deal more capital to develop the copper than the gold or silver. These properties in an air line from Kennett are, I should say, about four miles. Kennett is the nearest railroad station. By a very difficult wagon road and trail I should say it was above seven miles. There

(Testimony of M. E. Dittmar.)

was no railroad completely through to the properties. There was perhaps 1500 to 1800 feet of open development work, consisting chiefly of tunnels and drifts and some shallow shafts on the grounds, but was prospective in character so far as a copper mine is concerned. There was a considerable showing of value, but no large tonnage. I have been in the mining business about fifteen years. I am acquainted with the commissions usually allowed for the sale of mining properties. I am familiar with the terms upon which these properties were eventually sold. Personally, I have not the knowledge except the facts as I got them from the people who carried out the deal, the people representing the Summit Group Company, the Stauffer Chemical Company and the Phoenix Securities Company. I am familiar with the contract letter dated December 27th, 1907, referred to in the deposition of Mr. Hatch and of the terms of sale embodied in it. There has been considerable correspondence between me and the Phoenix Securities Company during the period prior to the consummation of this sale. I was familiar with the properties involved in this action between May, 1907, and December of that year. The Stauffer Chemical Company was continually employed on or about the properties during that period. Work did not [41—8] cease up to the time that the new contract was entered into. I have been engaged as a mining broker, that is, in part, but not altogether, but I was alert on that work when the opportunity offered. Since 1899 I have been engaged in part as

(Testimony of M. E. Dittmar.)

a mining broker. I held myself out as such. I was connected with a mining publication, and interested in mines continuously in some capacity or other, ownerships and sometimes directing work and I made it part of my business to negotiate mining transfers. Since the very beginning of my activities on the Shasta County Copper field I have been in touch with mining property and have been over the district again and again, and I am recognized as somewhat of an authority on the Copper Belt in Shasta County.

Q. Assuming the fact you stated with regard to the nature of these properties and their accessibililty and the nature of the agreement which you originally had with the Phoenix Securities Company and the sale that was finally consummated, what in your opinion would be the reasonable value of your services in bringing about the final consummation of that deal?

To which question defendant objected upon the ground that the evidence sought to be elicited was immaterial, irrelevant and incompetent, and that no proper foundation had been laid for it, which objection was by the court overruled and an exception noted on behalf of defendant.

A. I consider under the circumstances the arrangement arrived at as not unreasonable; by the arrangement arrived at I mean that if the mine developed I would ultimately receive my $10,000. If it did not, I receive nothing, so to that extent I felt that the reasonable chance I was taking **[42—9]** with them probably entitled me to more than the usual ten per

(Testimony of M. E. Dittmar.)

cent commission. In the other case where I agreed to ten per cent I believed that if the deal went through in a short time in ninety days or four months or even in six months, I would rather in that case have taken ten per cent than a somewhat larger commission in an indefinite way.

(The witness continuing testified:)

I think that $10,000 the amount originally agreed upon is still a reasonable fee for my services in view of the deal that was finally consummated. Commissions that are allowed on the sale of mining properties are a variable quantity as a rule. On properties that are more or less prospective in character I should say that ten per cent is absolutely a minimum. I have myself given considerably more than that amount to people who have been instrumental in handling property for me. I have given fifteen per cent contracts, and I know of them being considerably higher. A mining broker is called upon frequently to look into properties that do not meet the expectations of his clients, and it always involves large expense. I myself have had the experience of perhaps examining five and six and eight properties before I would find one that would interest me at all. I have never received any compensation from the Stauffer Chemical Company in connection with this purchase, or from anyone. I wrote to Mr. De Guigne telling him that I expected them to pay that money through the Phoenix Securities Company for me. Therefore while the $10,000 was added I would get it indirectly from the Stauffer Chemical Company

(Testimony of M. E. Dittmar.)

through the Phoenix Company. Nothing at all was said about the payment of any commission. I discussed that with Mr. Kunze telling him in case they bought [43—10] it in a shorter time that the ten per cent commission would be satisfactory, as I had discussed it with the Phoenix people. That was not necessarily included in the purchase price. The negotiations in that case were indefinite almost to the last minute, but I did not take that subject so very seriously because I did not expect that a ninety day deal would go through.

Cross-examination.

That was reduced to writing and specifically covered in the agreement with the Stauffer Chemical Company and the defendant on May 1st, 1907. I received an acknowledgment of the letter I wrote to Mr. De Guigne the President of the Stauffer Chemical Company under date of April 20th, 1907. I don't know whether I have that. I think it must be with the papers there. I did not follow up that point of securing a contract from the Stauffer Chemical Company referred to in my letter to Mr. De Guigne. I think I saw Mr. Charles Kunze the first time in October in 1906. I went to New York I should judge in about two or three weeks after I met him; I reached New York very early in December. I had business in view in the East, but the other matter that I was going on particularly at that time did not materialize, but while East I went to Boston and formed some connections in copper interests in Boston that I regarded as legitimate. I was

(Testimony of M. E. Dittmar.)

probably ten days or two weeks in New York and Boston, and perhaps a week in Chicago and Milwaukee. I called on Mr. Hatch two or three times. On my first visit to Mr. Hatch I did not mention the Chemical Company at all. The first time that I mentioned the Stauffer Chemical Company was when Mr. Hatch pressed me in his letter to me of February 13th to know who [44—11] the parties were that were behind me. I did not mention the name to Mr. Reif or Mr. Connor. Before going East I may have mentioned what the probable price would be to Mr. Kunze; that is my recollection. I mentioned $75,000 as a probable price. Mr. Kunze is mistaken in regard to my mentioning the commission to him before I went East. I suggested $75,000 to Mr. Hatch as the price when I was in New York. I said nothing to him about a commission at that time. I figured that that would be net to them. Mr. Hatch says that $75,000 had to be net to them. Upon my return from New York I discussed the commission with Mr. Kunze. I did not know Mr. Kunze's position with the Stauffer Chemical Company. Did not know what his attitude was. Did not know whether he was seeking to make a commission out of the deal or where his interest would come, because naturally I presumed he wanted to make some money and consequently to get at the fact I told him that the net price was $75,000 to the Phoenix Securities Company and any commission made would have to be made above that figure, and I suggested to him that on an eighteen months' bond taking chances with the de-

(Testimony of M. E. Dittmar.)

velopment of the property if it was necessary for me to take care of him in the matter I would want $100,000 or $25,000 commission; $12,500 to me and $12,500 to him. He told me that he was interested in the transaction with the Stauffer Chemical Company and he wanted to get the best price that he could. Then we debated the question of commission and finally it was understood that $10,000 would be added to the $75,000 price made. I did not know that he was acting as a representative of the Chemical Company. I had never up to that time met anybody but Mr. Kunze. I did not know who he represented. He stated to me, [45—12] of course, that the Stauffer Chemical people were his people, but I never met him before, and knew nothing about him at all. I think I knew at that time that the Stauffer Chemical people were the ones who were considering it.

[Testimony of R. C. Lane, for Plaintiff.]

R. C. LANE, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

I am a broker and have been engaged in that line of business more than ten years. I have been in this vicinity about ten years, and I was in the business previous to that. I have been acting as a broker in the consummation of sale of mining properties during the time mentioned. I am acquainted with the commissions that are usually allowed and the reasonable value of services of brokers in effecting sales of mining property.

Q. I will ask you, Mr. Lane, what, in your opinion,

(Testimony of R. C. Lane.)

would be the reasonable value of the services of a mining broker in effecting the sale of about 20 or 25 full-sized mining claims in the northern part of this State, and more particularly in Shasta County, the ore in the properties being principally copper, and the properties not being on the railroad, but about seven miles off, and connected with the railroad partly by wagon road and partly by trail; the properties being sold by the broker, or rather, a contract being entered into originally by the broker, for a purchase price of $85,000 on an eighteen months' contract, with an option that they might be taken in three months' time for $50,000 cash, which agreement was subsequently modified by another agreement by which agreement the sellers secured $2,500 cash at the time that the substituted agreement was entered into, and $33,500 in bonds and $15,000 in cash, making a total of [46—13] $51,000 with $15,000 remaining unpaid at the time that the broker made a claim for the reasonable value of his services?

To which question defendant objected upon the ground that the evidence sought to be elicited was immaterial, irrelevant and incompetent, and that no proper foundation had been laid for it, which objection was overruled by the Court and an exception noted on behalf of defendant.

A. The customary way of paying a commission is a certain percentage on the selling price, and that price on a sale of that kind—that commission—ought not to be less than ten per cent, and ordinarily we get more than that for it—of the selling price.

(Testimony of R. C. Lane.)

Q. And also, Mr. Lane, disregarding the particulars of the agreement, that I embodied in the previous question, and bearing in mind simply the nature of the properties that I described, namely, that there were a number of full-sized mining claims, bearing copper ore principally, in the northern part of the State, and situated as I have stated before, what, in your opinion, would be the reasonable value of the services of a broker in securing the sale of those properties, what percentage?

Mr. REDMAN.—We will renew the objection we made, your Honor.

The COURT.—Yes.

Mr. REDMAN.—And your Honor will allow us an exception.

The COURT.—Certainly.

A. Well, I should say not less than ten per cent.

(The witness continuing testified:)

Twenty per cent would be a reasonable commission. **[47—14]** It is often paid and more. It depends on the amount of work that the broker has to do, and the conditions. A fully developed property of either gold or copper is much harder to sell than one undeveloped. I don't know that the fact that the properties are on a railroad or are remote has any effect on the value of the broker's service in effecting a sale, excepting it is harder to get anyone to look at property a long distance from the railroad than if it were nearby. The more expense and the more trouble a broker is put to, the more commission

(Testimony of R. C. Lane.)

he is entitled to receive. Those things ordinarily are understood in advance about what he is to do and the commission based on that. I should say that twelve and one-half per cent at least was the reasonable value of the services rendered by the plaintiff bearing in mind the properties and the terms of the sale as finally consummated.

Cross-examination.

I don't know why one who is not a broker, but who was engaged in some other business and only incidentally a broker, would not be entitled to the same commission. He would be performing the same work. I would say that he was entitled to the same rate if he simply made one or two sales. If he did not perform the regular services, but simply answered a question or two, I don't know that he would be.

Q. Take a case where a man is a regular broker and I go to him with property to sell and employ him to sell it, give him a contract, and he makes an effort, and after a great deal of time and perhaps money spent, he succeeds in finding a purchaser for the property and there is a sale; then another case where a man goes into a broker's office knowing that the broker had some relation of some kind with [48—15] the owner of the property and asks him to get into communication with the owner with a view of ascertaining what the owner wants and he does it, writes a letter, and the owner says I want so much money and the sale is closed; now, regardless of any

(Testimony of R. C. Lane.)

rule which brokers may have established as to their commission, don't you recognize a distinction in the services rendered—that one is greater than the other? A. Yes, sir.

Q. Now, aside from any rule which brokers may have, wouldn't that make a difference in the amount of the reasonable compensation to be paid in those two cases?

A. I don't think it would. We would have to have some of the cream with the bad.

The COURT.—He is not talking about the "cream" now, he is talking about the value of the services; not what you might be able to get if you got somebody in a tight place, but simply what the value of your services would be in the one case as compared with the other.

A. Of course, you render more services in the first than you do in the second, but they charge the brokerage just the same if they consummate the deal.

Mr. REDMAN.—Q. Eliminating any rule brokers may have about their charges and to get some cream along with the skimmed milk, you do recognize that aside from that, that one is rendering a greater service and therefore should receive more compensation than the other.

The COURT.—Yes, he has said so.

Prior to the trial of the action the depositions of Edward S. Hatch, Frank M. Clute and Henry Cumisky, witnesses produced on behalf of defendant were taken in New [49—16] York pursuant

(Testimony of R. C. Lane.)

to stipulation between the parties. Some of the exhibits, copies of which were annexed to said depositions were read in evidence on behalf of plaintiff, including the agreement of May 1st, 1907, between defendant and the Stauffer Chemical Company (Exhibit 18).

The testimony of said witnesses given upon their said depositions, together with the rest of the exhibits attached thereto were read in evidence on behalf of defendant (it being stipulated that the copies of the correspondence and documents attached to said depositions were true and correct copies of the originals thereof).

The testimony of the said witnesses given upon said depositions and the said exhibits thereto are as follows: **[50—17]**

[Deposition of Edward S. Hatch, for Defendant.]

EDWARD S. HATCH, a witness produced and called on behalf of the defendant, having been first duly sworn by the Commissioner to tell the truth, the whole truth and nothing but the truth, and being interrogated by counsel, testified as follows:

Direct Examination to Defendant's Counsel.

Q. 1. Are you acquainted with M. E. Dittmar, the plaintiff in this action? A. I am.

Q. 2. Has the plaintiff been to see you at your office in the City of New York? A. He has.

Q. 3. Where is your office, and where was it located when the plaintiff called to see you?

A. My office is at Number 100 Broadway, Borough

(Deposition of Edward S. Hatch.)

of Manhattan, City of New York, at which address my place of business has been located continuously, and since the year 1906 and for a number of years prior to that date.

Q. 4. You are an attorney and counselor at law?

A. Yes, sir.

Q. 5. As a lawyer, have you occupied professional relations to the Phoenix Securities Company, and if so, what, and during what period of time?

A. I have been counsel to the Phoenix Securities Company from about the time of its organization in the year 1905 and believe I am still counsel for that corporation.

Q. 6. Now, do you remember when the plaintiff called upon you at your office at 100 Broadway, in the City of New York? **[51—18]**

A. Mr. Dittmar called at my office on the 7th day of December, 1906, in the forenoon; told me he was in New York, stopping at the Imperial Hotel, and he spent about half an hour with me talking about things in general but nothing in particular. He spoke about the properties of the Phoenix Securities Company in the west and from his manner I assumed he was going to talk some proposition to me for the Phoenix Securities Company, but he made no proposition up to the time of his leaving, and he said in substance that he would come in again. He spoke about a man named Drake, and I inquired of him particulars of some other persons, of whom he could give me no information, and this is substantially all that took place at that interview.

(Deposition of Edward S. Hatch.)

Q. 7. Did Mr. Dittmar call to see you the next day?

A. No, he did not come into my office the next day, but information reached me that he had called Mr. Reif, the President of the Phoenix Securities Company, and Mr. Reif telephoned my office on the 11th of December, 1906, that Mr. Dittmar had been to see him and had been referred to me and then to Mr. W. E. Connor.

Q. 8. When did Mr. Dittmar call on you?

A. On the 11th of December, 1906, Mr. Dittmar called and saw me and said that he would call upon Mr. Connor on the 12th of December.

Q. 9. At this interview with you on the 11th of December, did Mr. Dittmar make any proposition to you concerning any of the properties of the Phoenix Securities Company? **[52—19]**

A. No, sir, he did not make any proposition that day, but I believe I said to him that it was for him to make a suggestion of a practical character to the Phoenix Securities Company if he wanted to accomplish anything.

Q. 10. Did Mr. Dittmar see you again after this?

A. Yes, he called upon me again on the 13th of December, 1906, and then apparently disclosed the real purpose of his visit east. It was quite late in the day on the 13th when he called, and he advised me that he had seen Mr. W. E. Connor without any practical result. I do not recall that he used those words, but that was what I understood from what he said, that he had not accomplished anything with

(Deposition of Edward S. Hatch.)

Mr. Connor. He told me that he was leaving that night for California and would return east the latter part of January, or early in February, and that in the meantime he would correspond with me. He said he would correspond with us or with me in respect to the conditions of a bond, and that on those lines we could do as we thought best upon hearing from him. This is substantially all he said about the Summit and Graves and North Mammoth extension properties.

Q. 11. Was there anything said between you and Mr. Dittmar at that interview about a commission to him?

A. There was not. He was apparently making an offer, but he did not invite me to make any proposition to him on behalf of the Phoenix Securities Company. He said he was going to correspond.

Q. 12. When next did you hear from Mr. Dittmar?

A. It was not until the end of January that I next heard from him. **[53—20]**

Q. 13. Prior to Mr. Dittmar calling upon you in December, 1906, had you sent for him or invited him to come and see you?

A. He came on his own initiative and unsolicited as far as I know.

Q. 14. Well, what was the nature of the communication you received from him at the end of January, 1907?

A. On the 30th of January, 1907, I received from Mr. Dittmar a telegram which I now produce.

DEFENDANT'S COUNSEL.—I offer this tele-

(Deposition of Edward S. Hatch.)

gram in evidence and ask the Commissioner to mark it with the initials H. A. B., Defendant's Exhibit 1, of this date, but to return a compared copy with the testimony, in order that the original may be preserved and not bound up with the record.

The Commissioner marked the telegram "Dfts. Ex. 1, Mch. 25, 1912." A compared copy is annexed to this testimony, similarly marked.

Q. 15. Did you send any reply to Mr. Dittmar to this telegram of his dated January 30, 1907?

A. I did. I sent Mr. Dittmar a telegram on the 31st of January, 1907. I have not the original, of course, as I have not seen it since I sent it to the plaintiff, but I have a record of its contents, which was as follows: "Make proposition on line seventy-five thousand and deposit five thousand security to do two thousand work monthly with definite number men." I confirmed this telegram **[54—21]** in a letter of the same date, which I sent to Mr. Dittmar, and of which I kept a duplicate copy. I have not seen the original of this letter since I sent it to the plaintiff. I produce my copy, which was a carbon copy stricken off by the same impression that made the original. I hand this copy to the Commissioner.

DEFENDANT'S COUNSEL.—I ask the Commissioner to mark this copy letter with the initials H. A. B., Defendant's Exhibit 2, of this date. I offer it in evidence and ask the Commissioner to return a compared copy thereof with this record.

Original is so marked and the compared copy similarly marked is returned herewith.

(Deposition of Edward S. Hatch.)

Q. 16. Mr. Hatch, have you received a number of letters at different times, subsequent to this, from M. E. Dittmar, the plaintiff? A. I have.

Q. 17. In that way you have become fairly well familiar with his signature? A. I believe I have.

Q. 18. Will you look at the letter I now show you and state whether or not it bears the signature of the plaintiff, and state under what circumstances it came into your possession?

A. The paper now handed to me is signed by the plaintiff, M. E. Dittmar, to the best of my information **[55—22]** and belief. Although it is addressed to Mr. Charles Kunze, bearing date January 31, 1907, it was received by me at my office through the mails. Subsequently I received a letter from Mr. Dittmar bearing the same date, January 31, 1907, with a memorandum attached under date of February 3, 1907, that it was sent by mistake to another address, from which it appears that the Kunze letter had been sent to me by mistake by Mr. Dittmar.

DEFENDANT'S COUNSEL.—I ask to have this letter, purporting to be signed by M. E. Dittmar, and addressed to Charles Kunze, dated January 31, 1907, marked by the Commissioner with the initials H. A. B., Defendant's Exhibit 3, March 25, 1912, and I offer it in evidence, and request the Commissioner to return a compared copy with this record instead of returning the original.

The letter is so marked and the compared copy is annexed hereto similarly marked.

(Deposition of Edward S. Hatch.)

Proceedings adjourned to 4 P. M. at the same place.

Proceedings continued Monday, March 25, 1912, at 4 P. M. at the same place.

Same appearances.

Proceedings adjourned to Tuesday, March 26, 1912, at 10 A. M. at the same place.

Proceedings continued Tuesday, March 26, 1912, at **[56—23]** 10 A. M. at 165 Broadway.

Same appearances.

Examination of EDWARD S. HATCH resumed.

Direct Examination to Defendant's Counsel.

Q. 19. Will you now look at the letter I show you bearing date January 31, 1907, purporting to be signed by M. E. Dittmar and addressed to Hatch & Clute, 100 Broadway, New York, with a memorandum under date of February 3, 1907, attached addressed to "Mr. Hatch" and signed "D" and state whether those two papers are the communications mentioned by you and which you received from the plaintiff shortly after the 31st of January, 1907.

A. These are the letters that I referred to in my answer to the last question. The smaller one, dated February 3, 1907, is the memorandum as to the letter having been sent by mistake to someone else.

DEFENDANT'S COUNSEL.—I ask to have these two papers marked with the initials H. A. B., Defendant's Exhibits 4 and 5 respectively, March 26, 1912, and I offer them in evidence, the paper dated February 3, 1907, as Exhibit 4, and the letter dated January 31, 1907, as Exhibit 5, and I ask the Com-

(Deposition of Edward S. Hatch.)

missioner to return compared copies with the record, similarly marked.

The letters are so marked by the Commissioner and compared copies are returned herewith. **[57—24]**

Q. 20. I now show you a letter bearing date February 7th, 1907, purporting to be signed by the plaintiff and addressed to your firm. Did you receive that from the plaintiff?

A. I did. It is Mr. Dittmar's acknowledgment of the receipt by him of my letter to him of the 31st of January, 1907.

DEFENDANT'S COUNSEL.—I offer this letter in evidence and ask the Commissioner to mark it Defendant's Exhibit 6, March 26, 1912, with the initials H. A. B., and to return a compared copy thereof with the record.

It is so marked and the compared copy is annexed hereto.

Q. 21. I show you another letter bearing date February 18, 1907, and ask you if you received that from the plaintiff? A. I did.

DEFENDANT'S COUNSEL.—I offer this letter in evidence and I ask to have it marked Defendant's Exhibit 7, of March 26, 1912, with the initials H. A. B., and to have a compared copy returned with the record.

The original is so marked and the compared copy is annexed hereto.

Q. 22. I show you another letter bearing date February 19, 1907, and ask you if you received that

(Deposition of Edward S. Hatch.)

from the plaintiff? A. I did. [58—25]

DEFENDANT'S COUNSEL.—I offer this letter in evidence and ask to have it marked Defendant's Exhibit 8, of March 26, 1912, with the initials H. A. B., and have a compared copy returned with the record.

The original is so marked, and the compared copy is annexed hereto.

Q. 23. Mr. Hatch, did you send to Mr. Dittmar any reply to his letters of February 18 and February 19, 1907, which have just been produced and marked?

A. I did. I wrote him under date of February 25, 1907. I have not the original, which I presume is with Mr. Dittmar, but I have a carbon copy, which is made by the same impression that produced the original.

Q. 24. And is this paper which I now show you the copy of your letter of February 25, 1907, to the plaintiff? A. It is.

DEFENDANT'S COUNSEL.—I offer this copy letter in evidence and ask the Commissioner to mark it with the initials H. A. B., of March 26, 1912, Exhibit 9, and to return a compared copy with the record. The paper is so marked, and a compared copy thereof is herewith annexed.

Q. 25. I show you a letter purporting to be signed by M. E. Dittmar bearing date March 6, 1907, and ask you if you received that from the plaintiff.

A. This letter was acknowledged by my partner, Mr. Clute, apparently on March 19, 1907, during my temporary [59—26] absence from the office; but

(Deposition of Edward S. Hatch.)

I personally read it and answered it on the 29th day of March, 1907, now shown me, as appears by lead pencil endorsement of mine on the face of the letter. And the same applies to a letter bearing date March 13, 1907, signed M. E. Dittmar.

DEFENDANT'S COUNSEL.—I offer in evidence the letter of March 6, 1907, and ask to have it marked by the Commissioner with the initials H. A. B., Defendant's Exhibit 10, of March 26, 1912, and to return a compared copy with the record.

The original is so marked and a compared copy is hereto annexed.

DEFENDANT'S COUNSEL.—I ask to have the letter just referred to, dated March 13, 1907, marked in evidence by the Commissioner as Defendant's Exhibit 11, of March 26, 1912, with the initials H. A. B., and to have a compared copy returned with this record.

The original is so marked and a compared copy is annexed hereto.

Q. 26. Will you look at the copy of the letter I now show you and state if you recognize it as an office communication to Mr. Dittmar?

A. I recognize this as the duplicate or carbon copy of Mr. Clute's acknowledgment of Mr. Dittmar's letters of the 6th and 13th of March, 1907. I did not write this particular acknowledgment, as I have stated, but the [60—27] letters were acknowledged by Mr. Clute during my temporary absence from the office; but, on my return, I approved of this communication which Mr. Clute had sent to Mr. Dittmar.

(Deposition of Edward S. Hatch.)

DEFENDANT'S COUNSEL.—I ask to have this copy letter marked Defendant's Exhibit 12, for identification of March 26, 1912, with the initials H. A. B.

It is so marked.

Q. 27. Now, it would appear from Mr. Dittmar's communication to your firm of March 13, 1907, that he enclosed to you with that letter a form of option agreement, and I ask you what, if anything, was done by you or by your office with that form or paper.

A. I caused a draft of the option agreement to be drawn myself, somewhat along the lines of the form sent by Mr. Dittmar, and I wrote him on the 12th of April, 1907, enclosing my draft to him.

Q. 28. I show you a copy letter dated 4/12/1907 and ask you if that is a copy of your letter to Mr. Dittmar enclosing draft option agreement, and being the letter to which you have just referred.

A. This is the carbon or duplicate copy which I retained of the letter in question. The original I presume is in the possession of the plaintiff; this copy was made by the same impression that produced the original.

DEFENDANT'S COUNSEL.—I offer this copy letter in evidence and ask to have it marked Defendant's Exhibit 13, March 26, 1912, with the initials H. A. B., and to have a compared copy [61—28] returned with the record.

The paper is so marked and the compared copy is annexed hereto.

Q. 29. I show you an original letter dated April 20, 1907, signed M. E. Dittmar, and addressed to your

(Deposition of Edward S. Hatch.)

firm, and attached to it a carbon copy of a letter bearing date April 20, 1907, addressed to C. de Guigne, President of the Stauffer Chemical Company, and I ask you whether you received these papers, and from whom.

A. I received these papers from the plaintiff, Mr. Dittmar, and acknowledged them and replied thereto on or about the 26th of April, 1907, in a letter I wrote to Mr. Dittmar, and bearing that date.

DEFENDANT'S COUNSEL.—I offer these letters in evidence and ask to have them marked Defendant's Exhibits 14 and 14a of March 26, 1912, with the initials H. A. B., and ask to have compared copies returned with this record.

The originals are so marked and the compared copies are annexed hereto and similarly marked.

Q. 30. I show you copy letter containing six and a half pages, bearing date 4/26/07, addressed to M. E. Dittmar, and asking you if this is your communication of April 26, 1907, to Mr. Dittmar to which you have just referred, and in which you answered his letter of April 20, 1907?

A. It is. The original I have not seen since I mailed it to Mr. Dittmar, but this is my office duplicate or [62—29] carbon copy produced with the same impression that produced the original.

DEFENDANT'S COUNSEL.—I offer this copy letter of April 26, 1907, in evidence and ask to have it marked by the Commissioner Defendant's Exhibit 15 of March 26, 1912, with the initials H. A. B., and to have a compared copy returned with this record.

(Deposition of Edward S. Hatch.)

The paper is so marked and the compared copy is annexed hereto.

Q. 31. I now show you a telegram and ask you if you received that, and when.

A. This is a telegram I received apparently from M. E. Dittmar on or about the 26th of April, 1907.

DEFENDANT'S COUNSEL.—I offer this telegram in evidence and ask the Commissioner to mark it Defendant's Exhibit 16 of March 26, 1912, with the initials H. A. B., and to annex and return with the record a compared copy thereof.

The original is so marked and a compared copy is annexed to.

Q. 32. I show you a letter dated May 4, 1907, signed M. E. Dittmar, and ask you if you received that letter from the plaintiff.

A. I did. This is Mr. Dittmar's acknowledgment of the receipt of my letter of the 26th of April, 1907, where I sent him a revised form of option agreement.

DEFENDANT'S COUNSEL.—I offer this letter of May 4, 1907, in evidence. I ask to have the [63—30] Commissioner mark the original with the initials H. A. B., Defendant's Exhibit 17, of March 26, 1907, and to return a compared copy with the record.

The original is so marked and the compared copy is annexed hereto.

Q. 33. Mr. Hatch, referring to the telegram of Mr. Dittmar dated April 26, I ask you whether you caused an option contract or agreement to be type-

(Deposition of Edward S. Hatch.)

written and sent to Mr. Dittmar for execution by the Stauffer Chemical Company.

A. We had an option contract form stricken off and typewritten in accordance with the telegram of April 26th, and this was mailed to Mr. Dittmar on the 27th of April, 1907.

Q. 34. Following this, did you receive on behalf of the Phoenix Securities Company the document which I now show you, bearing the signature of the Stauffer Chemical Company, being option agreement dated May 1st, 1907, and acknowledged before Augusta W. Dinzenberg, Notary Public, May 16, 1907?

A. This is the original option agreement signed by the Stauffer Chemical Company bearing date May 1st, 1907. They had a similar or duplicate of this executed by the Phoenix Securities Company. The Stauffer Chemical Company had the Phoenix Securities Company's signature to their duplicate of their contract, and the Phoenix Securities Company hold this document with the Stauffer Chemical Company signature.

DEFENDANT'S COUNSEL.—I offer in evidence this agreement or option contract dated May 1st, 1907, and ask the Commissioner to [64—31] mark it with the initials H. A. B., Defendant's Exhibit 18 of March 26, 1912.

It is so marked, but defendant's counsel objects to having the original returned with this record, although agreeing to forward the same to the defendant's attorney of record to be produced by him in

(Deposition of Edward S. Hatch.)

open Court on the trial of this case, owing to the fact that the document is voluminous and will encumber the record, as well as being in danger of being mutilated by annexing it to the record and forwarding it through the mails therewith.

Proceedings adjourned to Wednesday, March 27, 1912, at 10:30 A. M.

Proceedings continued Wednesday, March 27, 1912, 10:30 A. M., at the same place.

Same appearances.

Examination of EDWARD S. HATCH resumed.

Direct Examination to Defendant's Counsel.

Q. 35. After the option agreement of May 1, 1907, was executed and exchanged between the Phoenix Securities Company and the Stauffer Chemical Company, what next happened, as far as you know, and when?

A. As far as I know, the Stauffer Chemical Company proceeded to do more or less development work upon the Summit and Graves and North Mammoth Extension properties [65—32] in California under the terms of that option agreement, for the purpose of seeing whether they would exercise the option given them to purchase the property at $50,000 cash by July 15, 1907, or whether they would purchase it at $85,000, in eighteen months' time.

Q. 36. Did anyone connected with the Stauffer Chemical Company call upon you during or while development work was being done by them upon the property?

(Deposition of Edward S. Hatch.)

A. On July 16, Mr. C. de Guigne of the Stauffer Chemical Company, the President, I believe, of that concern, called upon me at my office, mentioning that work was being done by his company upon the property, but he made no mention of taking advantage of the $50,000 cash proposition.

Q. 37. Did Mr. de Guigne make any explanation of his reason for calling upon you on this occasion?

A. Merely that he called while in New York City on his way to Europe.

Q. 38. Well, did you hear after that from the Stauffer Chemical Company, and when?

A. I heard by letter in October, 1907, that they were continuing development work.

Q. 39. What next happened?

A. On December 19, 1907, Mr. Adolph Kunze, connected with the Stauffer Chemical Company, called upon me at my office; after telephoning me from my hotel uptown to advise me that he was in the city. He presented to me some credential or letter from John Stauffer, of the Stauffer Chemical Company, which I have not now at hand, but the substance [66—33] of it was that Mr. Adolph Kunze had full authority to represent the Stauffer Chemical Company. Mr. Adolph Kunze then explained to me that the financial situation in California was in such condition that the Stauffer Chemical Company did not care to continue expending money on the properties of the Phoenix Securities Company in California; that they could not afford to expend the money for

(Deposition of Edward S. Hatch.)

promotion that they had contemplated, even if they found what they had expected to find in the property. He also mentioned what he said was a 50% drop in the value of copper from the time they took the option contract, and that they wanted to change the option contract into some other arrangement or some definite contract.

Q. 40. Did you discuss any new arrangement with him or make any effort to work out some plan along new lines which would be acceptable to the Stauffer Chemical Company?

A. We negotiated together there two or three hours, resulting in a tentative understanding between Mr. Kunze and myself that the property should be conveyed to a new corporation to be organized, and where the total obligation of the Stauffer Chemical Company would be very much less than anything they would have to assume under the original option. The details of this new arrangement were to be reduced to writing in the form of a letter or by correspondence if Mr. Kunze should be able to procure the approval of the Stauffer Chemical Company, and subsequently the details, with some changes and modifications, were reduced to writing and are set forth in a letter which I sent to the Stauffer Chemical Company bearing date the 27th of December, 1907, and this [67—34] letter was dictated in the presence of Mr. Adolph Kunze on the day of its date, and the letter constitutes the written contract and conditions under which the property was act-

(Deposition of Edward S. Hatch.)

ually taken under control by the Stauffer Chemical Company.

Q. 41. What became of that original letter of December 27, 1907?

A. It was sent to the Stauffer Chemical Company and I have never seen it since, but it is probably in the possession of the Stauffer Chemical Company in California, and no doubt can be produced there on the trial of this action.

Q. 42. Did you keep in your office a letter-press copy of this communication to the Stauffer Chemical Company, dated December 27, 1907, and is this the letter-press copy thereof which I now exhibit to you?

A. This is the letter-press copy kept in my office of the communication in question. It is bound up in our letter-press book containing letters of November and December, 1907.

Q. 43. Are you willing to have the Commissioner return this letter-press copy with the record in this case?

A. That I cannot do. The book contains a very large quantity of letter-press copies of letters, but I am willing that the Commissioner may make a true and correct copy from this letter-press copy, and return the same with the record.

DEFENDANT'S COUNSEL.—The Commissioner is requested to make a true and correct copy of this letter, bearing date December [68—35] 27, 1907, and to annex the same to this record as Defendant's Exhibit 19, of this date, and such copy is offered in evidence.

(Deposition of Edward S. Hatch.)

Q. 44. What happened after the making of this new arrangement dated December 27, 1907?

A. A corporation known as the Summit Copper Company was organized. The property known as the Summit and Graves and North Mammoth Extension properties were conveyed to this new corporation, and it did issue stock and bonds generally in accord with the plan specified in the agreement of December 27, 1907.

Proceedings adjourned to 4 P. M.

4 P. M. Proceedings resumed.

Same appearances.

Q. 45. I call your attention to Mr. Dittmar's letter of March 6, 1907, where he states that he was not asking you to pay him a commission, and ask you if you relied upon that statement of his. A. Yes.

Q. 46. I call your attention to the statement of Mr. Dittmar in the same letter that he was taking care of himself, did you also rely on that statement of his? A. Yes.

Q. 47. I call your attention to the further statement of Mr. Dittmar in the same letter that he had an understanding with the parties having the purchase of the property under consideration for a commission, did you also rely upon that statement? [69—36] A. Yes.

Q. 48. Mr. Hatch, referring to the last sentence of your letter to Mr. Dittmar of February 25, 1907, did you understand, as there asserted in substance, that Dittmar was acting for the Stauffer Chemical Company as their agent in the negotiations with you and

(Deposition of Edward S. Hatch.)

not as the agent for the Phoenix Securities Co.?

A. I did.

Q. 49. Mr. Hatch, have you any knowledge or recollection that at any time you asked Mr. Dittmar to act as the agent for the Phoenix Securities Co. or requested him to find a buyer for the property?

A. No.

Q. 50. Mr. Hatch, did the Stauffer Chemical Co. ever complete or carry out the option agreement of May 1st, 1907? A. No.

Q. 51. Did that option agreement remain in force for the term of 18 months specified therein?

A. No.

Q. 52. Did the Stauffer Chemical Co. ever carry out the option contract of May 1st, 1907?

A. No.

Q. 53. As matter of fact, did not the Stauffer Chemical Co. request the cancellation of the May 1st, 1907 option agreement? A. Yes.

Q. 54. Was the May 1st, 1907 option agreement cancelled and the Stauffer Chemical Company relieved of any [70—37] obligation thereunder?

A. Yes.

Q. 55. Did Dittmar have any part whatever in the negotiation for, or in the making of the new arrangement between you on behalf of the Phoenix Securities Company, and the Stauffer Company of December 27, 1907? A. No.

Q. 56. What was the real reason and occasion for the cancellation of the May 1st, 1907, option, and the making of the new agreement of December 27, 1907?

(Deposition of Edward S. Hatch.)

A. The Stauffer Company refused positively to take the Summit and Graves properties under the option of May 1, 1907, but were willing to furnish certain considerations if someone else would make an agreement with our clients that would limit their liability, and the corporation known as the Summit Coppper Company entered into a tri-party agreement between our client and the Stauffer Chemical Company for the purchase of the property for something other than cash, and all that our client got out of the original option of May 1, 1907, was, I believe, the sum of $2,500.

Q. 57. What work and time and study did you personally expend to devise and interest the Stauffer Chemical Company in the new agreement of December 27, 1907, after they had announced their intention to abandon the option?

A. I, with the assistance of my office, expended time continuously for a period of several years, trying to liquidate something out of the Summit Copper agreement at an expense to our client of in round figures, I believe, about $10,000, with the result that to-day the matter is [71—38] not complete, nor has the client realized what is due under the Summit Copper-Stauffer agreement.

Q. 58. Was there any object or motive in the plan you worked out in the December 27, 1907 letter, for the organization of the Summit Copper Company and the conveyance of the property to it other than to overcome the refusal of the option holder to carry out the option, and the further purpose of reaching

(Deposition of Edward S. Hatch.)

some agreement which the Stauffer Chemical Company would be willing to carry out?

A. Not to my knowledge.

EDW. S. HATCH.

The foregoing testimony of Edward S. Hatch read over and subscribed to by him before me this 27th day of March, 1912.

[Seal] H. A. BERGMAN,
Notary Public, King County.

Certificate filed in New York County.

Further proceedings adjourned until March 28, 1912, 10:30 A. M., at the same place. [72—39]

Proceedings continued Thursday, March 28, 1912, 10:30 A. M.

Present: Same attorneys.

[Deposition of Frank M. Clute, for Defendant.]

FRANK M. CLUTE, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination to Defendant's Counsel.

Q. 1. Mr. Clute, what is your profession?

A. Lawyer.

Q. 2. Are you a member of the firm of Hatch & Clute? A. Yes.

Q. 3. And have you been a member of that firm since the year 1906, continuously? A. Yes.

Q. 4. And down to the present time? A. Yes.

Q. 5. I call your attention to the letters which have been marked in evidence as Exhibits 10 and 11 in this case, bearing date respectively March 6, 1907,

(Deposition of Frank M. Clute.)

and March 13, 1907, signed M. E. Dittmar, and ask you if you received both of those letters in the mails from Mr. Dittmar? A. I did.

Q. 6. Then these letters, Defendant's Exhibits 10 and 11, came into your hands, and what did you do with respect to them?

A. I acknowledged their receipt and laid them aside for Mr. Hatch to answer.

Q. 7. Did you turn them over to Mr. Hatch, or send them in to his office?

A. I placed them on his desk. **[73—40]**

Q. 8. He was absent, then, from the office, temporarily, at the time? A. He was.

Q. 9. Now, Mr. Clute, in what way did you acknowledge the receipt of these letters from Mr. Dittmar? A. By letter.

Q. 10. I show you Defendant's Exhibit 12 for Identification in this case, being a copy of a letter addressed to M. E. Dittmar, bearing date March 19, 1907. Did you write that letter? A. I did.

Q. 11. Did you send the original letter to Mr. Dittmar? A. I did.

Q. 12. And is this a carbon copy produced by the same impression that produced the original?

A. It is.

DEFENDANT'S COUNSEL.—I offer as Defendant's Exhibit 12 in evidence the document heretofore marked as Defendant's Exhibit 12 for Identification, and I ask to have the Commissioner mark this paper Defendant's Exhibit 12, March 28, 1912, with the initials H. A. B., and to return a copy

thereof with the record.

It is so marked and a compared copy similarly marked is annexed hereto.

Q. 13. Mr. Clute, you added something more than a mere acknowledgment to Mr. Dittmar of his communication in **[74—41]** this letter of yours of March 19, 1907, did you not? A. I did.

Q. 14. What had you noticed in particular with respect to Mr. Dittmar's letter of March 6 or March 13, 1907?

A. When I received the letters, both of which, as I recall it, came to hand on the same date, and not being particularly familiar with the matter, I looked up the press copy of the letter from this office to which Mr. Dittmar referred in his letter of March 6, and noticed that the portion of our letter which he pretended to quote had been misquoted and in my acknowledgment I called his attention to the misquotation.

Q. 15. Now, when Mr. Hatch returned, did you acquaint him with the contents of your letter of March 19, 1907, to Mr. Dittmar?

A. I did. It was attached to the Dittmar letters which were submitted to Mr. Hatch.

Q. 16. Mr. Clute, I call your attention to Defendant's Exhibit 18, in this case, being the option agreement between the Phoenix Securities Company and the Stauffer Chemical Company, bearing date May 1, 1907. Were you familiar with this document? Did you ever have it in your possession?

A. I knew that I read it at one time.

(Deposition of Frank M. Clute.)

Q. 17. You knew of the execution of that document, did you, at or about its date? A. Yes.

Q. 18. Your firm acted on behalf of the Phoenix Securities Company during the year 1907, and following the **[75—42]** execution of this document, or option agreement, did it not? A. Yes.

Q. 19. And were you familiar with the affairs of the Phoenix Securities Company during all that period of time? A. Oh, generally so, yes.

Q. 20. Do you know whether or not this option agreement was carried out or availed of by the concern who was given this option?

A. I know it was not.

Q. 21. Do you know what was done by the parties to this option agreement with respect to its cancellation or continuance in force?

A. It was cancelled.

Q. 22. Was anything at all paid to the Phoenix Securities Company by the Stauffer Chemical Company under or upon this option agreement of May 1, 1907? A. No, not to my knowledge.

Q. 23. Something has been said about a payment of $2,500. Was that paid to the Phoenix Securities Company under any document or agreement, and if so, what?

A. It was paid to the Phoenix Securities Company pursuant to the terms of a contract letter dated December 27, 1907, addressed to the Stauffer Chemical Company?

Q. 24. Are you referring now to the agreement of December 27, 1907, with the Stauffer Chemical Com-

(Deposition of Frank M. Clute.)

pany, which has been marked in evidence here as Defendant's Exhibit 19? A. Yes.

Q. 25. You have stated that the original option agreement of May 1, 1907, was cancelled. How was that cancellation [76—43] evidenced or accomplished?

A. By the contract letter, Exhibit 19, above referred to.

Q. 26. What particular provision of that letter have you reference to?

A. The words therein contained as follows, on page 1 of said letter: "The existing contract is to be annulled and no claim made in favor of either party under it."

Q. 27. Are you able to state on what date the $2,500 referred to in that December 27, 1907, contract was paid? A. On January 15, 1908.

Q. 28. And is that the $2500 item that is specified as the payment which was to be made in order to bind the proposition contained in the letter of December 27, 1908? A. It is.

Q. 29. Now, Mr. Clute, what did your office do in performance or in the carrying out on behalf of the Securities Company of the provisions of this letter of December 27, 1907?

A. We proceeded with the organization of a corporation under the laws of the State of Maine, by the name of Summit Copper Company, which corporation purchased from the Phoenix Securities Company the properties covered by the contract and issued in payment thereof stock and bonds, the

(Deposition of Frank M. Clute.)

bonds being secured by a mortgage or deed of trust.

Q. 30. That is, the properties in question were conveyed to the Summit Copper Company by the Phoenix Securities Company.

A. That is right. **[77—44]**

Q. 31. And the Summit Copper Company then mortgaged the properties to a trustee to secure an issue of bonds? A. Yes.

Q. 32. And was the stock of the Summit Copper Company issued also in payment or in part payment for the property? A. Yes.

Q. 33. Under the arrangement evidenced by this letter of December 27, 1907, who received the stock of the Summit Copper Company?

A. It was all turned over to the Stauffer Chemical Company or the individual stockholders of that Company.

Q. 34. Now, what was the amount of the bond issued by the Summit Copper Company?

A. $37,500, that is my best recollection.

Q. 35. Now, what other document did the Summit Copper Company execute or give at the time of the transfer of the property to it?

A. What we have designated a tonnage agreement, providing for the payment by the Summit Copper Company to the Phoenix Securities Company of a royalty of fifty cents a ton on all ore mined and shipped from the property in question up to a gross sum of $45,000, according to my best recollection.

Q. 36. Was this Summit Copper Company an en-

(Deposition of Frank M. Clute.)

tirely separate and independent corporation, organized? A. It was.

Q. 37. What year was it organized in?

A. 1908. **[78—45]**

Q. 38. Now, Mr. Clute, these bonds that you have spoken of aggregated, you say, the sum of $37,500?

A. Yes.

Q. 39. And by whom were they received?

A. Phoenix Securities Company.

Q. 40. This sum represents the entire issue of bonds of the Summit Copper Company, does it not, $37,500? A. It does.

Q. 41. Do you know by whom the $2,500 cash you have referred to was paid?

A. The Stauffer Chemical Company.

Q. 42. What, if anything, did the Stauffer Chemical Company bind itself to do with respect to any of these bonds?

A. The Stauffer Chemical Company guaranteed the payment of these bonds to the extent of $22,500.

Q. 43. Then that $22,500 obligation, together with the $2,500 cash paid by the Stauffer Chemical Company to bind the December 27, 1907 agreement, was all that the Stauffer Chemical Company obligated itself absolutely to pay in this entire transaction under the new arrangement, is that true?

A. That is true.

Q. 44. If they had availed themselves of the option agreement of May 1, 1907, what would they have been required to pay for the property?

A. $85,000.

(Deposition of Frank M. Clute.)

Q. 45. Did you have any talks or conferences or communications with the plaintiff in this case, Mr. Dittmar, in connection with this arrangement which thus limited the obligation of the Stauffer Chemical Company? **[79—46]** A. I did not.

Q. 46. Or your office? A. No.

Q. 47. Was there any other reason or motive, so far as you know, for adopting this plan specified in the December 27, 1907 agreement, other than to overcome the refusal of the option holder to exercise the original option and the further purpose of reaching some agreement which the Stauffer Chemical Company would be willing to carry out?

Q. 48. Referring to the $37,500 of bonds, what was the due date of those bonds, Mr. Clute?

A. $2,500 on March 1, 1908, without interest; $2,500 on May 1, 1908, without interest; $2,500 on July 1, 1908, without interest; $5,000 on January 1, 1909, with interest; $10,000 on January 1, 1910, with interest; $15,000 on January 1, 1911, with interest.

Q. 49. Those were the dates respectively on which the bonds fell due? A. They were.

Q. 50. According to their terms. A. Yes.

Q. 51. Now, which of these bonds was it that the Stauffer Chemical Company guaranteed, the first $22,500? A. Yes, that is my recollection.

Q. 52. Mr. Clute, do you know what payments were actually made by the Stauffer Chemical Company upon any of these bonds which you have described or upon the tonnage agreement made by the Summit Copper Company? A. Yes. **[80—47]**

(Deposition of Frank M. Clute.)

Q. 53. Were the payments made to the Phoenix Securities Company? A. No.

Q. 54. To whom were they made?

A. The creditors of Phoenix Securities Company to whom the bonds and tonnage agreement had been assigned.

Q. 55. Did you at all times remain in charge of the collections, you or your firm? A. Yes.

Q. 56. Then please state what the payments were.

A. $33,500 was paid on the bonds at the following dates and in the following installments: April 6, 1908, $2,500; May 13, 1908, $2,500; July 6, 1908, $2,500; December 28, 1908, $5,000; July 1, 1909, $7,000; January 4, 1910, $7,000; June 29, 1910, $7,000. In respect to the payment of January 4, 1910, an explanation should be made. At different times prior thereto the Stauffer Chemical Company had made payments of interest which prior to January 4, 1910, amounted to $1,200 in the aggregate. A claim was made by it, the Stauffer Chemical Company, that the total sum so paid as interest should be credited on account of principal under the agreement of December 27, 1907, and the claim was allowed and the money so received as interest was credited as a payment of principal and the Stauffer Chemical Company paid $5,800 cash in addition thereto making in all $7,000, the amount of the January 4, 1910 payment. These total payments aggregate $33,500, the remaining $4,000 of the face of said bonds having been allowed to said Stauffer Chemical Company in consideration of it agreeing to pay the balance **[81—48]** of bonds on which it

(Deposition of Frank M. Clute.)

was not a guarantor, and upon some adjustment. The tonnage agreement was liquidated in July, 1911, between its then holder and owner, being an assignee of one of the creditors, at the sum of $30,000 for which the Summit Copper Company gave its notes, $5,000 each, first payable on August 1, 1911, which was duly paid and $25,000 of which still remained unpaid and undue. The remaining $25,000 is due in installments of $5,000 on the 7th day of July in the years, 1912, 1913, 1914, 1915, and 1916 respectively.

Q. 57. Well, Mr. Clute, has there ever been as much as $75,000, then, for these properties that were involved in this December 29, 1907 agreement?

A. No.

Q. 58. It has been stated that this present case of the plaintiff here was commenced on or about the 28th of December, 1908; prior to that date, what did the payments which you have enumerated were made upon the bonds, amount to?

A. Prior to that date, $7,500 on bonds, and $450 received as interest but afterwards credited to principal as above stated.

Q. 59. Was that all that had been paid to any concern or creditor or assignee on account of those bonds, is that right? A. Up to that date.

Q. 60. And nothing had been paid on the tonnage agreement specified in the December 27, 1907, agreement prior to December, 28th? [82—49]

A. Nothing.

Q. 61. I think you mentioned there was a payment of bonds on December 28, 1908?

(Deposition of Frank M. Clute.)

A. Yes.

Q. 62. What did that amount to?

A. $5,000 for principal and $450 for interest afterwards credited to principal as above stated.

Q. 63. Was any part of the $4,000 allowance deducted at that time, or was it subsequently?

A. Subsequently, I believe.

Q. 64. So that the Stauffer Chemical Company took up all the bonds at $4,000 less than their face, is that right? A. Yes.

Q. 65. And prior to December 28, 1908, they had only taken up $7,500 worth?

A. That is all, as before stated.

Q. 66. And altogether, from and subsequent to the 28th of December, 1908, they paid only $26,000 for what they took up?

A. That is correct, which included the $1,200 transferred from interest to principal as before stated.

Q. 67. And that disposed of the bonds?

A. It did.

Q. 68. And there still remained the tonnage agreement which was not liquidated until the year 1911? A. Yes.

Q. 69. And that was liquidated for $30,000?

A. Yes. **[83—50]**

Q. 70. Were there any legal services and disbursements rendered in connection with the efforts to collect these various amounts from the Stauffer Chemical Company?

A. There was an immense amount of time occupied

(Deposition of Frank M. Clute.)

in negotiations by correspondence respecting the payment of the bonds as maturity thereof approaches, and very important consultations, including three trips to San Francisco, two by Mr. Hatch and one by myself, resulting in the payment of a larger sum of money by the Stauffer Chemical Company than it has originally bound itself to pay, and also involving the liquidation of the tonnage agreement at a fixed amount, which up to the date of said liquidation was not in a practical condition to show any financial result.

Q. 71. Now, then, as far as the tonnage agreement is concerned, which originally was made for a total amount of $45,000, that depended entirely upon the mining of ore in the property? A. It did.

Q. 72. And what was the obligation, if any, of the Stauffer Chemical Company with reference to the tonnage agreement?

A. That its terms were fulfilled, and when I was in San Francisco in July, 1911, the officers of the Stauffer Chemical Company stated to me that up to that time they had found nothing that they believed from the condition of the adjoining properties, that this mine would at some time in the future show results.

Q. 73. Had the Stauffer Chemical Company assumed any obligations in respect to that tonnage agreement, other [84—51] than to agree that the Summit Copper Company would comply with its terms? A. That is all.

Q. 74. And that called for no payments of money

(Deposition of Frank M. Clute.)

except upon condition that ore was mined and shipped?

A. Yes. That is all to my recollection which was to be paid Phoenix Securities Company or its assigns.

Q. 75. So far as you know, was any ore mined or shipped? A. None at all.

Q. 76. Now, then, as to that tonnage agreement, the Stauffer Chemical Company on the liquidation of it has paid to date only $5,000? A. That is all.

Q. 77. And that $5,000 was paid in the year 1911?

A. August 1st.

Q. 78. And that makes the total amount paid by the Stauffer Chemical Company on either bonds or tonnage agreement, $41,000 to this date?

A. Yes.

Q. 79. And unless in the future they take up and pay $5,000 additional notes, each for the sum of $5,000, and which covered a period from the present time up to the time 1916, their total expenditures to date amount to $41,000? A. That is correct.

Q. 80. And if they take up the additional outstanding notes in the future, until the last of them is paid, they will have expended a total sum of $66,000, is that so? A. That is correct. [85—52]

Q. 81. Then, even if the Stauffer Chemical Company completes everything that it is under obligation to pay or perform in this matter, it will not have paid a total sum of $75,000 for the property?

A. It will not.

FRANK M. CLUTE.

(Deposition of Henry Cumiskey.)

The foregoing testimony of Frank M. Clute read over and subscribed to by him before me this 29th day of March, 1912.

[Seal] H. A. BERGMAN,
Notary Public, Kings County.

Certificate filed in New York County. [86—53]

[Deposition of Henry Cumiskey, for Defendant.]

HENRY CUMISKEY, a witness called on behalf of the defendant, being duly sworn, testified as follows:

Direct Examination to Defendant's Counsel.

Q. 1. Mr. Cumiskey, are you the Treasurer of the Phoenix Securities Company? A. Yes, sir.

Q. 2. Mr. Cumiskey, the agreement between the Phoenix Securities Company and the Stauffer Chemical Company, evidenced by Defendant's Exhibit 19 in this case, being the letter of December 27, 1907, called for a cash payment of $2,500 to be paid down by the Stauffer Chemical Company to the Phoenix Securities Company to bind the proposition specified in that letter. Was any other money, to your knowledge, paid to the Phoenix Securities Company other than that $2,500 by the Stauffer Chemical Company?

A. No, sir.

HENRY CUMISKEY.

The foregoing testimony of Henry Cumiskey read over and subscribed to by him before me this 28th day of March, 1912.

[Seal] H. A. BERGMAN,
Notary Public, Kings County.

Certificate filed in New York County. [87—54]

Defendant's Exhibit 1 [Telegram, January 30, 1907, M. E. Dittmar to Edw. S. Hatch.]

March 25, 1912.

POSTAL TELEGRAPH.

Postal Telegraph Commercial Cable System.

COMMERCIAL CABLES.

Clarence H. Mackay, President.

TELEGRAM.

Registered Trade-Mark. Design Patent No. 36369.

The Postal Telegraph-Cable Company (incorporated) transmits and delivers this message subject to the terms and conditions printed on the back of this blank.

36Sf Ka 12 1250a

Redding Cal Jan 30-7

Received at

(Where any reply should be sent)

Edw S Hatch

Care Hatch and Clute, 100 Bway Newyork Reliable parties ready to consider summit and adjoining property price terms named answer

M. E. DITMAR. [88—55]

Defendant's Exhibit 2 [Letter, 1–31–1907, Hatch & Clute to M. E. Dittmar].

Mar. 25, 1912.

1–31–1907.

Re Phoenix Sec. Co.

M. E. Ditmar, Esq.,

Redding, Calif.

This morning we received your telegram which

reads as follows "reliable parties ready consider Summit and adjoining properties, price terms named. Answer." After looking up a memorandum we made of our interview with you a couple of months ago and conferring with those largely in interest, we wired you as follows— "Make proposition on line $75,000 deposit five security to do two thousand work monthly with definite number men."

As that is really on the same lines as was agreed upon with you when you were here, we are frank to say we were a little mystified as to the necessity of your wire but presume you had your own reasons for doing so.

Of course we cannot technically name all the terms and conditions in the telegram, or do more than pass on a proposition with terms and conditions, for that requires the formal act of the Board. But your ideas were so much in accord with ours when you were here, that we have no doubt of the acceptance of any fair proposition you make on those lines, with $75,000 as the price of Summit & Graves and Mammoth extension, which we believe are the technical [89—56] names of what you term Summit and adjoining properties. That so far as the minor conditions of the agreement, bond and lease are concerned, we believe you will not sumbit anything but what is fair and if we are right there will be not few changes required, we are quite certain.

At any rate, we did the best we could so far as wiring is concerned and trust we will have a letter

from you crossing this, and with very kind regards, remain, dear sir,

Faithfully yours,

(Sgd.) HATCH & CLUTE.

L. M. G. **[90—57]**

Defendant's Exhibit 3 [Letter, January 31, 1907, M. E. Dittmar to Charles Kunze].

March 25, 1912.

Subscription rates: $2.50 per year; $1.50 for six months. Advertising rates on application.

(Cut)

MINERAL WEALTH PUBLISHING CO.

M. E. DITTMAR, Editor.

Redding, Cal., Jan. 31, 1907.

Mr. Charles Kunze,

1439 Oak St.,

San Francisco, Cal.

Your two wires received. I wired you last evening stating that conditions for taking the people over the ground were not of the best as yet—no doubt a greater part of the ground is still covered quite thoroughly with snow but we have had considerable rain during the past few days that has helped to clear the snow from the higher altitudes and it may be possible when the clouds next lift that the South and East slope of the mountains, at least, will be cleared of snow.

It may be rather awkward for me to go to the property with you. In a case of that kind I should suggest that Mr. Graves accompany you on your trip. I must make a visit to the Afterthought Mine just as

soon as the weather conditions will permit and may leave tomorrow. In that [91—58] event I will not get back to Redding before Monday or Tuesday. If I should go tomorrow and you could postpone your trip two or three days I could arrange to go with you on my return.

The Phoenix people want $2000 a month expended on exploration and they seem to consider it essential to put up a forfeit with the Bank that this amount be expended. I have written to them suggesting that as long as we are dealing with reliable parties that a provision calling for a continuous employment of six or eight men with a forfeit clause in case the amount of work represented by these men is not done would be sufficient protection under the circumstances. My communication will probably reach them by the time your people would be ready to deal if they will be satisfied with the conditions otherwise and we can then take the matter up by telegraph to a certain extent.

Yours very truly.

M. E. DITTMAR. [92—59]

Defendant's Exhibit 4 [Letter, February 3, 1907, "D" to Mr. Hatch].

March 26, 1912.

Subscription rates: $2.50 per year; $1.50 for six months.

Advertising Rates on Application.

MINERAL WEALTH PUBLISHING CO.

M. E. DITTMAR, Editor.

W. D. EGILBERT, Bus. & Adv. Mgr.

(Cut)

Redding, Cal., Feb. 3, 1907.

Mr. Hatch.

The enclosed letter was sent by mistake to another address. Parties due here today but it is storming so do not know whether we can visit mine tomorrow or not.

D. [93—60]

Defendant's Exhibit 5 [Letter, January 31, 1907, M. E. Dittmar to Hatch & Clute].

March 26, 1912.

Subscription rates: $2.50 per year; $1.50 for six months.

Advertising rates on application.

(Cut)

MINERAL WEALTH PUBLISHING CO.

M. E. DITTMAR, Editor.

Redding, Cal., Jan. 31, 1907.

Messrs. Hatch & Clute,

100 Broadway,

New York.

Gentlemen:

I wired you yesterday as follows: "Parties ready

to consider Summit and adjoining properties. Price and terms named. Answer."

To-day I received your reply dated January 31 as follows: "Make proposition on lines $75,000, deposit $5,000 security to do $2,000 work monthly with definite number of men."

I expect the parties here to look into the matter within a few days and will then see how the proposition will stand. An engineer is coming with them who has already been over the ground and was very favorably disposed toward it. I had informed this engineer what would be the figures and terms but said that the proposition would be for a working bond, that is, the parties taking the option would agree to keep a certain number of men continuously employed and failing in this would forfeit the option. **[94—61]**

This has been the usual line of dealing on prospective properties on the Shasta County belt and as we will be dealing with reliable parties, or I would not take up the matter at all, you would be perfectly safe in making a provision say for the employment of six or eight men continuously during the life of the contract and failing to employ such a force on exploration the contract would be immediately forfeited together with all work performed and money expended by the parties who hold the option.

I cannot state anything definite regarding these matters for several days and this letter will probably reach you before anything definite can be arrived at. Under the circumstances you will under-

stand if some modifications of your telegram are necessary.

You will understand, of course, that 18 months is the time required for exploration purposes before paying for the property. I may say in this connection that in all probability diamond drilling will be employed to explore the ground. This will involve the expenditure of at least $2,000 a month but the parties in view will no doubt prefer a provision stating that a certain number of men be continuously employed and allow them to use their own discretion as to the method of employing them. Until *such that* a diamond drill could be installed it would not be possible to expend $2,000 a month to advantage —you may be hampered in closing the deal for some little time on account of unusually heavy snow in the mountains during this month and which had not entirely disappeared.

Yours truly,

M. E. DITTMAR. [95—62]

Defendant's Exhibit 6 [Letter, February 7, 1907, M. E. Dittmar to Hatch & Clute].

March 26, 1912.

Subscription rates: $2.50 per year; $1.50 for six months.

Advertising rates on application.

(Cut)

MINERAL WEALTH PUBLISHING CO.
M. E. DITTMAR, Editor.
W. D. EGILBERT, Bus. & Adv. Mgr.

Redding, Cal., Feb. 7, 1907.

Messrs. Hatch & Clute,
100 Broadway,
New York, N. Y.

Gentlemen:

Yours of January 31st, received and contents noted. The people who have in view the taking up of the Summit, the Graves and North Mammoth Extension properties have been looking over conditions for a number of days. A Mr. Kunze who represents the people mentioned in the deal is very favorably impressed. He is himself a practical mining man and engineer. Another one of the parties accompanied Mr. Kunze on his visit to the properties.

Mr. Kunze suggested that they should have a little more time than 18 months for exploration and he sets the time at about two years. I have been contending that 18 months would give them ample opportunity for [96—63] exploration but it may

be necessary to compromise a little on this point and add two or three months to the time suggested.

My object in wiring to you was to ascertain if the property was still open for I have no way of knowing but what you may have considered some New York buyers as different interests have from time to time figured on taking the property over for exploration purposes.

In the course of a few days or as soon as I hear more definitely I will draw up a memoranda of agreement setting forth the different provisions desired in the bond and forward a copy to you and you can make any alterations that you wish and in this way we can probably cover all points by mail in a comparatively short time.

Will you kindly inform me as to the condition of titles and it may be well to express your Abstract of Ti*le* to this property to me then I can have the abstract brought down to date and everything will be in readiness for the examination of the attorneys representing the bonding parties.

Yours very truly,

M. E. DITTMAR. [97—64]

Defendant's Exhibit 7 [Letter, February 18, 1907, M. E. Dittmar to Hatch & Clute].

March 26, 1912.

Subscription rates: $2.50 per year; $1.50 for six months.

Advertising rates on application.

(Cut)

MINERAL WEALTH PUBLISHING CO.

M. E. DITTMAR, Editor.

W. D. EGILBERT, Bus. & Adv. Mgr.

Redding, Cal., Feb. 18, 1907.

Messrs. Hatch & Clute,
100 Broadway,
New York.

Dear Sirs:

Yours of the 13th inst. received and has my consideration. The people who have in view the development and purchase of the Summit, the Graves and the North Mammoth Extension property are the Stauffer Chemical Company interests of San Francisco. You will have no difficulty in determining the responsibility of these interests as they are a very strong concern and their holdings extend to all parts of the Pacific Coast. They are willing to pay $75,000 for these properties in eighteen months from the date of entering into an agreement. They are willing to put eight men to work on exploration beginning the 1st of April and keep them on continuously thereafter or failing to do this will forfeit their contract.

I succeeded in getting them to consider eighteen [98—65] months sufficient time for exploration, and they have receded from the request for two years, but they do not wish to deposit a forfeit in case they do not carry out their contract, they considering that the forfeiture of all work done would itself be of considerable value and as long as they agree to keep a force of eight men continuously employed, taking into consideration the responsibility of the parties desiring to purchase, that this in itself will be ample evidence of good faith.

I expect the engineer representing the Stauffer Chemical Co. this evening or tomorrow and will then draw up a skeleton agreement and forward to you for the approval of the Board of Directors of the Phoenix Securities Company. On investigation I find that the Abstract of Title is here in the hands of your former attorney, Mr. George C. Perry, and we can have this brought down to date for the satisfaction of the parties taking the bond. My commission in the deal will amount to $10,000 and as the buyers know your price and understand that I am to receive a commission of $10,000 when the deal is consummated, it will no doubt be best to make the transfer direct from the Phoenix Securities Co. to the Stauffer Chemical Company and at the same time to give me an agreement for $10,000 and authorize the Bank of Shasta County holding the escrow papers to receive $75,000 for your credit and the remaining $10,000 for myself. Hoping that this will be satis-

factory and that we can reach an early conclusion, I remain,

Yours very truly,
M. E. DITTMAR. [99—66]

Defendant's Exhibit 8 [Letter, February 19, 1907, M. E. Dittmar to Hatch & Clute].

March 26, 1912.

Subscription rates: $2.50 per year; $1.50 for six months.

Advertising rates on application.

(Cut)

MINERAL WEALTH PUBLISHING CO.
M. E. DITTMAR, Editor.
E. D. EGILBERT, Bus. & Adv. Mgr.

Redding, Cal., Feb. 19th, 1907.

Messrs. Hatch & Clute,
100 Broadway.
New York.

Gentlemen:

I have requested the Bank of Shasta County to advise you as to the standing of the Stauffer Chemical Company, mentioned to you in my letter of yesterday, as to the parties desirous of taking the bond on your property in the vicinity of the Manmoth mine. No doubt this information will reach you about the same time that this communication does.

I received a letter from the engineer operating for the Stauffer Chemical Company, today. He is at the present time surveying in the district where the

property is located, and I will not be able to go into details with him further than mentioned in my letter of yesterday, until [100—67] he returns to Redding. He requests, however, that a clause be put in the bond giving the Stauffer Chemical Company a right to purchase the property outright by paying $42,500 within ninety days. I discussed this question with Mr. Bush of the Bank of Shasta County, and he concurs with me that if you wish to consider such a clause make the buyers a proposition that if they will pay $50,000 in ninety days, that the same will be accepted. So far as commission is concerned under this proposed clause it can be left in the same proportion as under the general terms of the bond. I believe that the clause on a $50,000 basis will be a good one to insert, so far as the selling interests are concerned, and would be seriously considered by the buying interests within the ninety days given.

As soon as you have had time to bring my communication of yesterday, and this letter, to the attention of the parties in interest, wire me as to your views of the case. If the ninety day clause is satisfactory on a $50,000 basis, wire me the counter proposition mentioning that sum, just as though the proposition for $42,500 had been laid before you without any suggestion on my part.

Yours very truly,

M. E. DITTMAR. [101—68]

Defendant's Exhibit 9 [Letter, February 25, 1907, Hatch & Clute to M. E. Dittmar].

March 26, 1912.

February 25th, 1907.

RE PHOENIX SECURITIES CO.

M. E. Dittmar, Esq.,
Redding,
California.

We are in receipt of your esteemed favors of the 18th and 19th by mail this morning, one following the other in an hour, and we hasten to acknowledge the receipt of the letters, and express to you what we imagine will in substance be the formal answer that we will make to those letters, after we have heard from some of the parties in interest who are out of the city, and with whom we must consult before we formally answer your letters.

In the first place, we are very confident that our clients will not pay a commission to exceed ten per cent. of the amount which they receive in cash or kind, and only when they receive it, and that deducted from that ten per cent. must be any other expenses incident to the transaction, so that the client will net out of any sale at least ninety per cent. of the purchase money or price.

We will cause to be investigated the final standing of the Stauffer Chemical Co. and must be reasonably satisfied thereof, and of the value of their signature to the contract, before we are willing to waive a deposit of some sort; whether it will be forfeit or not, we do require a [102—69] substantial deposit, un-

less the name subscribed to a contract is as good as money in a practical sense.

We should also want any Chemical Company to produce evidence of the authority of the officer subscribing a contract to purchase a mining property, inasmuch as ordinarily at least a Chemical Company would not have authority to speculate in mining properties.

We do not believe that our clients will be willing to name any price in any option less than $75,000 under any conditions whatsoever, but that does not mean, and we imagine the Stauffer Chemical Co. will fully appreciate the suggestion, that if they within ninety days see fit to make a reasonable proposition for a discount from $75,000 for cash that our clients might not consider it, but we are positive they would never consider such a discount as mentioned in your letters as being reasonable, but that question can be taken up for discussion at the time a real proposition is made to us to discount the option.

We should want a provision in any contract that did not provide for a forfeit that the ore extracted should be reduced with reasonable promptness to cash, and the cash deposited in the Bank of Shasta County, pending the determination by the proposed purchasers whether they would take up the option or not.

Of course if they took the option the deposit would belong to them. If they failed to take it up or broke their contract it would belong to us.

A very clear clause would have to be inserted in the contract, providing for the element of time, and

the number [103—70] of men kept to work, and the importance of that consideration to our clients, in making such a contract as we think is contemplated for the purchase of this property.

And by the way we should want a provision in the contract that would provide for a deposit of $15,000, which, however, would have a string to it reading that the same should *not deposited* by the Stauffer Chemical Co. so long as they carried out the terms of the contract, and no other party or parties were associated with them in carrying out the contract, or substituted for them as assignees or otherwise.

In other words, we are unwilling that any contract should provide for a direct or indirect assignment of this contract, or its performance by any assignee, directly or indirectly, unless a large deposit is made, which we recognize is practically a prohibitory provision as against any assignee of the contract.

Please don't understand that we are opposed to the making of this contract or shall put any obstacles in the way of our clients agreeing with the Stauffer Chemical Co. on a fair and reasonable contract, but on the other hand we want to frankly and promptly advise you that before we shall advise our clients to give up for eighteen months any opportunity to sell their property that our clients shall be protected in every reasonable way against the Stauffer Co. changing their minds, or placing us in a position which is not anticipated in their present negotiations through you with us. [104—71]

We think if the Stauffer Co. will draft, or cause to be drafted, a contract on the lines that are agree-

able to them, bearing in mind our suggestions, that then we can change those so far as they require additions or alterations, and we have no doubt it will be very easy to agree on the final phraseology before the first of April.

In conclusion, permit us to state we understand your second letter in relation to the discount is intended by the Stauffer Co. simply as a privilege to us, and not a variation of their negotiations through you to purchase at $75,000 on an eighteen months' contract.

We remain, dear sir,

Faithfully yours,

ALB. (Sgd.) HATCH & CLUTE. **[105—72]**

Defendant's Exhibit 10 [Letter, March 6, 1907, M. E. Dittmar to Hatch & Clute].

Subscription rates: $2.50 per year; $1.50 for six months.

Advertising rates upon application.

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MINERAL WEALTH PUBLISHING CO.

M. E. DITTMAR, Editor.

W. D. EGILBERT, Bus. & Adv. Mgr.

Recd. 3/16/07

FMC.

Ans. 3/29/07

ESH.

Ack. 3/19/07

Redding, Cal. March 6, 1907.

FMC.

Messrs. Hatch & Clute,

100 Broadway,

New York, N. Y.

RE PHOENIX SECURITIES CO.

I am in receipt of your communication of February 25th and I have discussed the substance of your letter with parties in interest.

You state that you are not "very confident that our clients will not pay a commission to exceed 10% of the amount which they receive in cash or kind." I wish to state that I am not expecting you to pay me a commission of 10% on the purchase price of $75,000. I am taking care of myself over that amount and have an understanding with the parties having the purchase of the property under consideration for a commission of $10,000 when the sale is **[106—73]** concluded. Now I suggest that the transaction be made direct between the Phoenix Securities Co. and the Stauffer Chemical Co. for $85,000—not $75,000—and that you receive the full $75,000 cash for the property and give me an agreement to pay the remaining $10,000 to me when the money is finally paid and the transfer concluded. It seems to me that this is a fair proposition as that amount of money is not a large sum to receive for bringing about a mining deal of the magnitude under consideration.

In case the parties taking the bond and make an offer to conclude the deal in 90 days or so and under the circumstances receive a discount on the purchase price then I will be willing in that case, to receive 10% of whatever amount is agreed upon. You will agree with me that this proposition is eminently fair to all concerned.

You state that you will cause to be investigated

the financial standing of the Stauffer Chemical Co. I wish to state that this is one of the prominent manufacturing concerns of California. It owns a plant at Stege, Cal., another at Bay and Dupont Sts. in San Francisco, another at Utah and Alameda Streets, San Francisco, and is building a large new sulphur subliming works at Oakland, Cal. You mention also the Company's authority to purchase mining property. As minerals enter very largely into the chemicals produced by this corporation they have, under their charter, the right to own mining properties. For instance the Company own a large iron pyrite mine near Berkeley, Cal., a borax mine in the Southern part of the State, a phosphate mine in Wyoming and a tungsten mine near Randsburg, Cal. **[107—74]** In addition to this the Company has recently acquired some cinnabar holdings in Monterey County. These facts you can readily ascertain. No doubt if you cause your Bank to wire to its San Francisco correspondent you will receive all the information you desire regarding the responsibility of the people that I represent.

The proposition of paying $42,500 within 90 days is more or less in the nature of a cash offer. You will understand that your properties in this mineral district are not developed and while the probabilities for development are good they are wholly prospective in character. Under the circumstances the price, even at that figure, is a good one if it would be paid down at this time but as they put the payment off for 90 days it would of course, mean that they would have some advantage of development in the

meantime and consequently I think that a counter proposition of $50,000 may suit them, and this may be productive of results.

It is doubtful whether the value of the stock and bonds in addition to the cash that was received for all these properties would reach ½ of the figure suggested under the 90 day option, and as your Company has done practically nothing to develop the property since then you will appreciate that I consider the proposition a fair one or otherwise I should never have consented to sell in the first place to the Phoenix Securities Co. for the amount that we, the original owners of the properties, received.

The proposition that you suggest regarding the reduction of ore is to a certain extent impracticable, **[108—75]** because the properties are connected with the railroad by means of a trail only and transportation would be practically prohibited. In any event the parties taking the bond should not be expected to deposit more than the net result after extracting and treating the ore and marketing the product. This then could apply on the purchase price or revert to the Phoenix Securities Co. as the case may be.

Regarding the element of time and the number of men kept at work, I fully agree with you on that point and in the proposition for a large deposit in case the Stauffer Chemical Co., assigned its contract will also be satisfactory although it may be well to qualify this so that permission can be given to assign by the Phoenix Securities Co. after investigating the parties interested in the transaction.

Of course you will understand that the Stauffer Chemical Co. desires first to develop the property before purchasing it—that is the object of an 18 months bond. The ground as it stands at present has only speculative value to the Stauffer Chemical Co. people but they are willing to spend a good many thousand dollars to investigate its real value. When they fail to keep the requisite number of men at work they will, of course, forfeit their contract. I enclose a skeleton of a contract along the lines that I consider fair to all concerned. As soon as you receive it if it meets with your approval in a general way I will appreciate a response by wire in order that I may at once notify the parties desiring to spend their **[109—76]** good money in making this property what I hope it will ultimately be, a valuable addition to the Shasta County Copper Belt.

Yours very truly,

M. E. DITTMAR,

Will forward contract form later. **[110—77]**

Defendant's Exhibit 11 [Letter, March 13, 1907, M. E. Dittmar to Hatch & Clute].

Ack. 3/19/07. FMC. ANS. 3/29/07. ESH.

March 26, 1912.

Redding Cal. March 13th, 1907.

Messrs. Hatch & Clute,

100 Broadway,

New York.

Gentlemen:

I enclose herewith a form for option and contract or agreement which we are considering for negotiations between the Phoenix Security Company and

the Stauffer Chemical Company.

After considering all the points you suggest and considering all points that probably have a bearing upon such an agreement, I have drafted this form in a general way, and hope that it will meet with your approval.

The clause that you wished inserted regarding the reduction of ores during the time allowed for development, I have left optional with the party of the second part. You must understand that ore must first be developed in quantity and thereafter transportation facilities must be provided for economical handling, before ore can be profitably shipped. Under the circumstances I think it best to leave the matter optional.

The clause that you suggested, providing for a deposit of $15,000, which is to guard against the assignment of the contract, I have modified to read: "without the approval of the party of the first part, or unless a **[111—78]** deposit of $15,000 be made by the party or parties to whom this option and contract may be assigned." I am of the opinion that this will be to the interest of all parties to the transaction. While the Stauffer Chemical Company have not in view the assigning of the option and agreement still conditions may change, and as long as your clients will approve of any new parties interesting themselves, it will make no difference in the transaction as a whole, or in case $15,000 is deposited this in itself will be ample evidence of good faith.

The form as a whole, is merely in the rough; I am

not looking for professional criticism as I make no pretense of being a lawyer, but I think you will find the various points brought out sufficient to base the ultimate negotiations upon.

I received your communication of recent date stating that parties in interest are out of the city. I hope by the time this reaches you, conditions will be so that prompt considerations can be had. I will appreciate it, if the enclosed meets with your general approval, that you will wire me to that effect.

You will note that I am not asking for any commission out of the $75,000, as agreed upon between us; I have arranged for the addition of $10,000, as shown in the contract, above your price, as my commission in the deal, and this is satisfactory to the Stauffer Chemical Company. As the deal is being arranged between the parties direct your escrow instructions to the Bank of Shasta County, **[112—79]** must provide to pay me $10,000 when the deal is concluded, or in case the deal is concluded earlier on a discount basis, the instructions should read that I am to receive ten per cent. commission of the amount involved in the transaction.

I think it will be well to accept a provision that will provide for a conclusion of the deal on a $50,000 basis, provided this money is paid, say by the 1st of July, 1907. By referring to my correspondence you will note where I mention a proposition from them providing for a 90-day clause.

Yours very truly,

M. E. DITTMAR.

P. S.—The provision for removing machinery will encourage the use of air compressors for power drills —diamond drills, etc. **[113—80]**

Defendant's Exhibit 12 [Letter, March 28, 1912, Hatch & Clute to M. E. Dittmar].

March 26, 1912.
March 28, 1912.
March 19th, 1907.

PHOENIX SECURITIES CO.

Mr. M. E. Dittmar,
Redding,
California.

Dear Sir:

Your letter of March 6th was received by us on Saturday last, the 16th inst., and your letter of March 13th with proposed form of option and contract came to hand to-day.

The parties referred to by Mr. Hatch in his letter of February 25th as being out of town are still absent from the city, and Mr. Hatch himself is away, not to return until the 25th inst., but will promptly thereafter give the matter his attention.

We want to call your attention to a slight inaccuracy in your letter of March 6th at the beginning of the second paragraph of said letter, where you say:

> "You (H. & C) state that you are not 'very confident,' " etc.

You will observe by Mr. Hatch's letter of Febru-

*ru*ary 25th that he says that we *are* "very confident," etc.

Yours very truly,

(Sgd.) HATCH & CLUTE.

FMC/ALB. [114—81]

Defendant's Exhibit 13 [Letter, 4–12–1907, Hatch & Clute to M. E. Dittmar].

March 26, 1912.

4–12–1907.

Re Phoenix Securities Co.

M. E. Dittmar, Esq.,
Redding,
Calif.

Enclosed please find a rough draft agreement, following as closely as I could your draft but, of course enlarging on it substantially. I think I have kept within bounds of fairness where a proposed purchaser pays nothing in cash and takes eighteen months to decide whether or not he wants to buy our property.

I appreciate the Stauffer Co. may submit it to their lawyer and he will propose this and suggest that which at this long distance may cause us never to get together. At the same time, if the Stauffer Co. will not vary anything that is not absolutely necessary in their opinion and very material, I think there will be no trouble.

We are wiring you to-day in reply to your telegram that Stauffer will not give $65,000 for the property by June 1st. One of the two principal parties with whom we consulted, is evidently desirous of nego-

tiating a deal with Stauffer if it can be negotiated, but they will surely not come down to any such figures as were intimated in some letters you wrote a month or so ago, [115—82] and we wired on the theory that perhaps rather than let the matter slip through you can secure a compromise figure somewhere between fifty and eighty-five thousand dollars, which will net us something between fifty and sixty-five thousand, which we can induce all sides to consent to. At any rate, we will try to do anything that you advise us can be carried out at your end.

Up to the present time, we think we have not had any suggestion or proposition from the Stauffer Co. only questions, as we understand you, that you have asked us, as distinguished from propositions from the Stauffer Co. to the Phoenix Co. We think perhaps that fact is a strong factor in influencing the directors of the Phoenix Co.

Excuse the roughness of the draft. You seemed to be in a hurry for it and we were anxious to accomodate you.

Believe us, dear sir,

Faithfully yours,

(Sgd.) HATCH & CLUTE. [116—83]

LMC.

Defendant's Exhibit 14 [Letter, April 20, 1907, M. E. Dittmar to Hatch & Clute].

March 26, 1912.

MINERAL WEALTH PUBLISHING CO.
M. E. DITTMAR, Editor.
(Cut)
W. D. EGILBERT, Bus. & Adv. Mgr.

Redding, Cal., April 20, 1907.

Hatch & Clute, Esqs.,
100 Broadway,
New York, N. Y.

Dear Sirs:

I received your communication enclosing form of contract between yourselves and the Stauffer Chemical Co. I am forwarding the same to the Stauffer Chemical people together with some suggestions that I believe essential to a deal being concluded and am mailing a copy of the letter to you so that you will understand the points referred to. I believe that in each case where I suggested changes or modifications that such change or modification will be to the interest of all parties concerned. You will understand that I know the conditions in this district very thoroughly and would not exact anything that is unreasonable on the one hand nor would I be willing to be party to a contract that would exact unreasonable things from myself.

The enclosed copy is self-explanatory.

Yours very truly,
M. E. DITTMAR. [117—84]

Defendant's Exhibit 14a [Letter, April 20, 1907, to C. de Guigne].

March 26, 1912.

April 20, '7.

C. de Guigne,

President Stauffer Chemical Co.

Dear Sir:

I enclose herewith copy of proposed form for contract between the Phoenix Securities Co. and yourselves. This will no doubt be taken up with your legal representatives and you may have some suggestions to make or some new clauses that you wish embodied. I have made a few marginal notes, one on page 3 regarding the treating of ore. I should suggest that the wording be so modified as to include the net value of ore only, to be deposited on account of the Phoenix Securities Co. and later, on the conclusion of the purchase, to be applied on the purchase price otherwise to be retained by the parties of the first part. Of course it is optional with you whether you reduce ore or not but if you will have to pay cost of mining, cost of transportation, cost of reduction and cost of marketing it would not be business to do any mining at all until such time as you have actually concluded the purchase of the property. Under the circumstances it would be wise for both parties to the contract to agree to apply the next results of ore extraction only and the clause should be modified to that extent. [118—85]

On page 5 I make a note modifying the clause that relates to the rights of the party of the second part

allowing the 30 days discontinuance of work in case of labor troubles. This clause is worded so as to read: "which trouble shall be such as to extend to other properties in the vicinity." This part of the clause should be cut out. It is possible that labor troubles may arise and be confined to this one property only and one then should have ample time to make any changes necessary.

On page 7 the clause relating to forfeiture of tools, cars, tracks, etc., should be modified by a paragraph exempting all machinery from forfeiture. I feel confident that the Phoenix Secureties Co. will agree to this as a failure to do so would merely result in no machinery being placed on the ground and hand work would necessarily be slow and would handicap exploration and development. For instance, you will no doubt want to place a diamond drill on the ground for exploration purposes, and any one understanding conditions, would not expect a forfeiture of machinery of this nature, so when it is explained I feel confident there will be no difficulty. The same thing is true of air compressors and power drills. If machinery of this nature was excepted there would be no objection to the forfeiture of the ordinary tools used in mining as a considerable supply of these tools including cars and tracks go with the property.

I received a wire from the Phoenix Securities people to the effect that they would consider a $50,000 cash offer at the end of 90 days or rather that it would probably [119—86] receive favorable consideration. This wire was in answer to my last

letter in which I gave my views of the situation in a general way.

I am sending a copy of this letter to the Phoenix Securities people. Kindly make any suggestions you wish in relation to the contract and return to me at the earliest possible date so that I may forward them to my principals.

I wish to state also that in addition to signing up contracts between yourselves I shall expect a contract concurred in by both yourselves and the Phoenix Securities Co. to pay me the $10,000 commission decided upon in case the property is acquired at the gross price of $85,000 on the 18 months option—or in case it is acquired for a lesser amount in shorter time then I am to receive 10% of the purchase price. When we have arrived at an understanding regarding the terms of the contract this additional contract with myself can be entered into, and instructions given to the Bank of Shasta County in order that when the payments are concluded through this Bank a segregation can at that time be made in line with our understanding.

Yours very truly, [120—87]

Defendant's Exhibit 15 [Letter, 4–26–1907, Edw. S. Hatch to M. E. Dittmar].

March 26, 1912.

4–26–1907.

Re Phoenix Securities Co.

M. E. Dittmar, Esq.,
Redding,
Calif.

We acknowledge receipt of your favor of the 20th

with a copy of your letter to the President of the Stauffer Co. of like date, by mail this morning. We presume really it does not call for any answer from us at this time but an expression of our views may arrive in Redding in time to aid you in your negotiations. Hence, we will make the following suggestions.

We regret that you felt constrained to volunteer the suggestions contained in your letter of the 20th to the Stauffer Co. because we assumed that you represented our interests, as distinguished from theirs and that no matter what degree of fairness you use in the matter, you can expect that you will be asked, as representing us, to concede more.

In the next place, you did not entirely grasp the legal meaning of the paper which was sent to you, which you altered and criticized and passed along to the Stauffer Co.

The theory of that paper so far as the matter of the ore is concerned, was that the Securities Co. should retain title at all times in the ore up to the time that [121—88] the Stauffer Co. is ready to buy and pay for the property. The changes that you make transfer the title we fear to the Stauffer Co. to be accounted for, it is true, to the Securities Co., but in law there is a great difference between the two situations and there is a great difference in the protection to the mine owner and there is no disadvantage to the proposed purchaser where such purchaser is a person of the financial responsibility of the Stauffer Co.

Then again in the matter of labor troubles, there

are a great many of us who hardly think it is fair, where the mine operator has a personal difference with his foreman, or with perhaps only an ordinary miner that is taken up by other miners who refuse to do thus and so unless the employer will concede thus and so, and strike, to have the loss borne or even shared by the mine owner, but where the miners in a certain district refuse to work under fair conditions and fair wages, in the opinion of miners, that is a proper provision to be included in a contract.

We are not inclined to bother much over a fair change in our contract about a lien on the personal property but that clause is contained in agreements in this office and accepted by people who are in the same condition as the Stauffer Co., but as the Stauffer Co. is presumed to be so financially responsible, the clause is not so very material. On the other hand, it is material to be observed as far as reasonably possible. [122—89]

We doubt whether our clients would appreciate the statement in your letter about the segregation of the funds to pay your commissions. That is liable to be taken as a reflection on us, I imagine and I think it may be that our clients will be prepared to make a fair agreement in relation to the payment to you of your commissions as soon as they get the money, and even perhaps arrange to have it paid to the Bank of Shasta Co. for you, but I doubt if they would consent to what I certainly never would consent to and that is, to have anybody else pay my bills for me and I should not be surprised if our clients would want the transaction closed here in New York,

or what would be practically closing in New York, even if the deeds are delivered in Redding. However, those matters we presume can be further discussed with you when you have heard from the Stauffer Co., but I wish to intimate to you these suggestions which are liable to be formulated into objections.

I should judge from your letter that if the property is sold for $50,000 you expect your commissions to be $5,000 and I am in hopes that your letter means what was intimated in your prior letter to us when you spoke of $85,000, namely that the difference between $75,000 and $85,000 was to be paid to you as commissions and I hope your idea now is that the price we will sell for is to be $55,000 and that your $5,000 commissions is to be paid over and above $50,000 paid to the Securities Co. Of course, if that is the meaning of your letter, I take back all that is intimated above as to segregation. [123—90] You surely would be justified in having that $5,000 paid direct to you.

I looked up to-day the facts in relation to our purchasing this property and at the time you sold it to us, we surely assumed it was worth at least $75,000 and we note that the consideration expressed in the papers is $60,000 to you; $55,000 in one deed and $5,000 in another. I am frank to say I do not recall just how the $60,000 was paid and my recollection is that it was paid partly cash and partly notes and partly in bonds of the Gold Mining Co. But apparently it was on a theory of a $60,000 valuation. Yet your recent telegrams seemed to assume that

$65,000 was all out of the question to be realized in 90 days from the Stauffer Co.

This letter is intended as a personal, good-natured suggestion and intimation of how the wind blows around the city of New York to-day and looking forward to a further letter from you before ever you receive this, I remain, with kind regards,

Faithfully yours,

(Sgd.) EDW. S. HATCH.

LMG.

After dictating the foregoing yesterday afternoon, the 26th, we received first the telegram from the Stauffer Chemical Co., at Redding, that they would accept the contract with the modifications contained in your letter of the 20th and the contract to be dated May 1st but that we should wire acceptance to their company at San Francisco. [124—91]

Shortly after that we received your telegram that the contract was acceptable and to wire our acceptance and have the contract executed in triplicate promptly and that we should wire the Bank.

Between 6 and 6:30 we received a wire from the Bank that the Stauffer people want to take charge of the property May 1st, requesting that we give your telegrams of that date prompt attention.

We immediately communicated with the President of the Company and with the majority of the directors but of course could not obtain any definite word until this morning and then only individual expressions of opinion, and neither could we have any papers executed until we have a Board meeting, which we will endeavor to secure a quorum for to be

held next Friday, the 3rd.

In the meantime, I will ship the draft contract into the best shape I can to cover the modifications suggested in your letter of the 20th, so far as I can secure the approval of a majority of the directors, and in that respect please urge upon the Stauffer people and anybody else interested, not to be too technical in their criticism of the changes which are not exactly as you may have meant to have them.

Any differences between the meaning of your words in your letter of the 20th to the Stauffer people, and the words we have used in modifying our former contract to correspond with yours as near as we can, can surely be agreed upon, independent of the contract and by correspondence, for they are not very material between honorable and responsible **[125—92]** contracting parties.

We are wiring you this morning so that by your time you should receive it before noon, as follows:—"Mailing proposed modified contract for joint execution, inform Bank. Hatch & Clute."

We are wiring the Stauffer Chemical Co. San Francisco, as follows:—"Our clients will accept contract with modifications. Writing Dittmar enclosing modified conditions. Hatch & Clute."

We assume you will advise the Bank so there is no necessity of our wiring them, for we surely would find it difficult to explain by wire what is stated in this letter.

There will not be the slightest objection for the Bank to give the Stauffer people possession of the Summit & Graves property on receipt of this letter

and assuming they are satisfied to execute the contract and without waiting to receive our executed contract.

On the other hand, on receiving a wire from you or the Stauffer Co. that they have signed the enclosed contract, we will have two copies signed here and wire you or them of the execution of the papers. Then when the Stauffer people send their copy of the contract to us, if there are any details to be practically modified, they can write us and we will endeavor to comply with any reasonable request they make, and in that respect you might advise the Stauffer people that we have been counsel something like fifteen years for the people in control of the Phoenix Co. and in that length of time we believe we have never had a lawsuit except one in relation to the deLamar property **[126—93]** where we are suing de Lamar, and have never had any serious dispute or difference with anybody and that is about the best recommendation I guess the Stauffer Co. want to guarantee them aganist any serious differences, so far as our clients are concerned.

Of course I am not technical in this last statement, for it is possible some little disputes arose some years ago in Phoenix, Arizona. In fact, I think there were some little differences between some of the people down there when an old company was in straightened circumstances financially, but I speak in a broad sense, for even those little matters, whatever they were, were straightened out satisfactorily in the end.

You notice I have put in a clause providing for

the payment to you of your commissions, in addition to the $50,000, because I thought perhaps we would need that assistance to bring around the majority of the Board of Directors, who felt that where they had purchased the property for $60,000 and had spent all the money they have on it since and then turned around and sold it for $50,000 or even $55,000 it would be a little difficult to explain to their satisfaction.

If, however, the Stauffer people will not pay you $5,000 in addition to the $50,000 you will have to refer to that in your telegram and strike out that paragraph and we will have to strike it out here, submit it to the Board and see whether they will let it go through, but I sincerely trust you will be able to handle it without embarassing me to that extent. On the other hand, if it is **[127—94]** stricken out, you surely have a letter from us that your commissions are to be 10% and this letter confirms my understanding of it, and I will have the Board authorize the payment of that commission to you from the proceeds of the sale to the Stauffer Co. and will give you a separate paper as evidence thereof.

By the way, as I have not time to write the Bank, you can explain to them that the directors of the Phoenix Co. seemed to think it is better financial policy to have the money paid to New York, rather than to Redding, for although we do not know of any lawsuits or troubles that might arise and do not know of any obligations of the Phoenix Securities Co. to anybody that would give cause for lawsuits, we should not wish to have the money tied up in Cali-

fornia. We would rather conduct any lawsuits here in New York, if any are to be conducted, and I am sure the Bank has confidence that we will see that the right thing is done for them from the proceeds, if there are ever any proceeds resulting from this contract and we will endeavor to write them in respect to *these* matter at another time.

ESH. **[128—95]**

Defendant's Exhibit 16 [Telegram, April 26, M. E. Dittmar to Hatch & Clute].

March 26, 1912.

POSTAL TELEGRAPH COMMERCIAL CABLES.

(CUT)

CLARENCE H. MACKAY, President.

TELEGRAM.

Registered Trade Mark. Design Patent No. 36369.

The Postal Telegraph-Cable Company (Incorporated) transmits and delivers this message subject to the terms and conditions printed on the back of this blank.

Delivered from
20 Broad St.

137 sf tu 25.

Redding Calif Apl 26

Hatch and Clute 100
Broadway Newyork.

Contract acceptable with modifications suggested letter april twentieth, wire your acceptance execute contract triplicate promptly date may first. Send bank Shasta county. Wire when may receive.

M. E. DITTMAR, 330p. **[129—96]**

Defendant's Exhibit 17 [Letter, May 4, 1907, M. E. Dittmar to Hatch & Clute].

March 26, 1912.

MINERAL WEALTH PUBLISHING CO.
M. E. DITTMAR, Editor.
W. D. EGILBERT, Bus. & Adv. Mgr.

(Cut)

Redding, Cal., May 4, 1907.

Messrs. Hatch & Clute,
100 Broadway,
New York, N. Y.

I have yours of the 26th enclosing new form for the consideration of the Stauffer Chemical Company. As a whole the form, I believe, will be satisfactory but it seems to me that there are a number of points that should be put in somewhat different form than at present. For instance, at the top of page 12 the sentence "to a smelter for testing purposes," should read "to a smelter or laboratory," as tests will no doubt be more apt to be of a character to be made in a laboratory instead of a smelter. The second paragraph on page 18 should be made to read "shall be properly timbered wherever necessary." Much of the rock through which tunnels will be driven is so hard that timbering is not necessary at all and in such cases it should not be made obligatory to put timbers in. The paragraph on page 16 referring to forfeiture of improvements may leave the question open whether such improvements as diamond drill outfits, **[130—97]** compressor plants or power drills would be forfeited in case of installation.

Equipment of this nature will be of great value to the property if installed to assist in rapid exploration and development but if the party of the second part was compelled to forfeit such machinery in case of relinquishing the option it is very likely that it would never be installed and only hand-work performed in the development. This will retard development and will in no wise benefit yourselves. All contracts that I have ever entered into either buying or selling mining property always carried a clause providing for the non-forfeiture of equipment of the nature mentioned but if you are of the opinion that the omission of the exception in the forfeiture clause referred to on page 16 would tend to handicap the party of the second part and the development of the property I think it will be very well to then make such a change in a supplemental contract that would overcome this clause.

Otherwise I am inclined to think that any little changes can be readily disposed of in supplemental way and no doubt the Stauffer people will be ready to enter into their part of the arrangement at once.

I note what you say regarding my commission. I thought it wise to have both the Stauffer Chemical people and yourselves enter into an agreement authorizing the commission as agreed upon. The price fixed to the Stauffer Chemical people was based on $75,000.00 net to yourselves as discussed while I was in New York, to this price I have added $10,000.00 as my commission based on an 18 months' contract. This of course is a little over ten per cent. **[131—98]** but in the sale of mining properties a much

larger commission is usual than in ordinary sales unless an outright purchase is made, in which event, the commission is usually based on the amount of money expended in the transaction. If a deal is very large the commission is frequently lower. In case the sale is concluded in the course of a few months for a lower figure than under the time arrangement covering 18 months, then I am willing to accept ten per cent or a smaller commission percentage than if I must wait for the deal to be consummated 18 months hence.

As far as the commission clause is concerned I do not know, of course, how that will strike the Stauffer Chemical Company but that clause in the matter of time and amount would be subject to modification any way. It resolves itself eventually into being willing to take the chance to but a prospect which may never develop into a mine provided a satisfactory discount may be obtained. Knowing the property and knowing the Shasta County Copper belt thoroughly, speaking for myself I would rather take property on the development option and carry on exploration for purpose of demonstrating ore paying for the property provided ore was demonstrated, at the amount stated, rather than to pay one third of that amount down for merely prospective ground. Of course I am anxious to see the Phoenix get as much money as possible as it is to my interest. The bonds and other securities that I hold in the Phoenix Securities Company are more important than my commission in **[132—99]** this deal. I am anxious to see the Phoenix Securities

accomplish something and if proper direction is had especially on your Bully Bill holdings to can be made a valuable property.

As soon as I can conclude matters with the Stauffer Chemical interests I will arrange for my contract for commission between you. It seems to me that this matter should be disposed of at the same time that the contract is entered into as I have given the proposition considerable attention and visited the mine a number of times in the interests of the deal and will certainly earn anything in the way of commissions as reasonable as I am asking in this case.

Yours very truly,

(Signed) M. E. DITTMAR. **[133—100]**

Defendant's Exhibit 18 [Agreement, May 1, 1907, Phoenix Securities Company and The Stauffer Chemical Co.].

THIS AGREEMENT, made and entered into as of the first day of May, A. D. 1907, and as of the City of New York, in the State of New York, in the United States of America, by and between the PHOENIX SECURITIES COMPANY, a corporation organized under the laws of the State of Maine, with a place of business in the said City of New York, party of the first part, and The Stauffer Chemical Co., a corporation organized under the laws of California, with a principal place of business in the City of San Francisco, State of California.

WITNESSETH:

That the parties to this agreement for and in consideration of the sum of one dollar, lawful money

of the United States, in hand paid by each of the parties to the other, the receipt of which is hereby severally acknowledged, and the further consideration of the various concessions, undertakings and agreements by the several parties assumed, promised or agreed to with each other and as evidenced by the terms of this contract, hereby give and accept upon the terms hereinafter set forth the right and option to purchase all those certain mines or mining claims situate, lying and being in Section 20 and 30, in Township 34 North, Range 5 West, M. D. M., and being in the Backbone Mining District, County of Shasta, State of California, and generally known as the Summit & Graves **[134—101]** properties, belonging to the Phoenix Securities Co., and which was formerly the property of the Shasta Gold Mines Corporation, purchased from or under contract with one M. E. DITTMAR, and which premises are more particularly and generally described, by the said dimensions, which have not been accurately surveyed, more or less, as follows:

All that certain group of quartz mining claims, situate, lying and being in Backbone Mining District, in the County of Shasta, State of California, known as the NORTH MAMMOTH EXTENSION GROUP OF QUARTZ MINING CLAIMS, and embracing and including:

(1) That certain quartz mining claim or location known as the "Summit No. 2," a copy of which notice of location is of record in the office of the County Recorder of said County of Shasta, in Book 27, at page 111, Miscellaneous Records of said County of

Shasta, and a copy of an amended notice of location thereof is of record in said office in Book 29 at page 6, said Miscellaneous Records;

(2) That certain quartz mining claim or location known as the "Summit No. 3," a copy of notice of which location is of record in the office of the County Recorder of said County of Shasta, in Book 27, at page 109, Miscellaneous Records of said county and a copy of an amended notice of location thereof is of record in said office in Book 29, at page 7, said Miscellaneous Records;

(3) That certain quartz mining claim or location known as the "Summit No. 4," a copy of notice of which location is of record in the office of County Recorder of **[135—102]** said County of Shasta, in Book 27, at page 110, Miscellaneous Records of said county, and a copy of an amended notice of location thereof is of record in said office in Book 29, page 7, said Miscellaneous Records;

(4) That certain quartz mining claim or location known as the "MARGARETTE MINE," a copy of notice of which location is of record in the office of the County Recorder of said County of Shasta, in Book 27, at page 366, Miscellaneous Records of said County, and an amended notice of location thereof is of record in said office in Book 27 at page 453, said Miscellaneous Records;

(5) That certain quartz mining claim or location known as the "YANKEE MINE," a copy of notice of which location is of record in the office of the County Recorder of said County of Shasta, in Book

27, at page 367, Miscellaneous Records of said County;

(6) That certain quartz mining claim or location known as the "JOKER QUARTZ CLAIM," a copy of notice of which location is of record in the office of the County Recorder of said County of Shasta, in Book 29, at page 4, said Miscellaneous Records;

(7) That certain quartz mining claim or location known as the "JUMPER QUARTZ CLAIM," a copy of notice of which location is of record in the office of the County Recorder of said County of Shasta, in Book 29, at page 5, Miscellaneous Records of said County;

(8) That certain quartz mining claim or location known as the "BANNER QUARTZ CLAIM," a copy of notice of which location is of record in the office of the County Recorder of **[136—103]** said County of Shasta, in Book 29 at page 5, Miscellaneous Records of said County;

Said quartz mining claims are located in the south half of Section 20, Township 34 North, Range 5 West, M. D. M., and reference is hereby expressly made to the above mentioned records of the County of Shasta, for a more particular description thereof;

ALSO ALL those certain lots, pieces or parcels of land situate, lying and being in the said County of Shasta, and particularly designated and described as follows, to wit;

That certain group of quartz mining claims known as the SUMMIT CONSOLIDATED GROUP OF QUARTZ MINING CLAIMS, and embracing and including:

1. That certain quartz mining claim or location known as the "MAIN MINE," located July 28, 1899, notice of which location is of record in the office of the County Recorder of said County of Shasta, in Book 17 at page 617, Miscellaneous Records of said County;

2. That certain quartz mining claim or location known as the "YANKEE MINE," located July 24th, 1899, notice of which location is of record in the office of the County Recorder of said County of Shasta, in Book 17 at page 518, Miscellaneous Records of said County;

3. That certain quartz mining claim or location known as the "IOWA MINE," located the 28th day of July, 1899, notice of which location is of record in the office of the County Recorder of said County of Shasta, in Book 17, at page 618, Miscellaneous Records of said County;

4. That certain quartz mining claim or location **[137—104]** known as the "OREGON MINE," located the 28th day of July, 1899, notice of which location is of record in the office of the County Recorder of said County of Shasta, in Book 17, at page 520, Miscellaneous Records of said County;

5. That certain quartz mining claim or location known as the "TEXAS MINE," located the 24th day of July, 1899, notice of which location is of record in the office of the County Recorder of said County of Shasta, in Book 17 at page 519, Miscellaneous Records of said County;

6. That certain quartz mining claim or location known as the "KEYSTONE MINE," located the

28th day of July, 1899, notice of which location is of record in the office of the County Recorder of said County of Shasta, in Book 17 at page 521, Miscellaneous Records of said County;

7. That certain quartz mining claim or location known as the "McHUGH MINE," located the 8th day of August, 1899, notice of which location is of record in the office of the County Recorder of said County of Shasta, in Book 17, at page 615, Miscellaneous Records of said County;

8. That certain quartz mining claim or location known as the "DORSEY MINE," located the 28th day of December, 1902, notice of which location was recorded in the office of the County Recorder of said County on the 28th day of July, 1905; and

9. That certain quartz mining claim or location known as the "AMERICAN MINE," located the 28th day of December, 1902, notice of which location was recorded in the office of the County Recorder of said County of Shasta, on the 28th day of July, 1905. **[138—105]**

All of said claims or location lying and being in Section 30 of Township 34 North, Range 5 West, M. D. M.

ALSO that certain group of quartz mining claims or locations known as the GRAVES CONSOLIDATED GROUP OF MINES, located in Section 30, Township 34 North, Range 5 West, M. D. M., and lying South of the Summit Consolidated Group of Quartz Mining Claims, and embracing and including the following claims:

1. That certain quartz mining claim or location

known as the "YELLOW JACKET MINE," located the 7th day of February, 1899, preliminary notice of location of which is recorded in Book 15, at page 247 and completed notice of location recorded in Book 16, page 53, Miscellaneous Records of said County;

2. That certain quartz mining claim or location known as the "KENO MINE," located the 7th day of February, 1899, preliminary notice of location being of record in Book 15 at page 252, and final notice of location in Book 16, at page 136, Miscellaneous Records of said County;

3. That certain quartz mining claim or location known as the "JAY BIRD MINE," located the 8th day of February, 1905, notice of said location being of record in Book 29 at page 205, Miscellaneous Records of said County;

4. That certain quartz mining claim or location known as the "COPPER QUEEN MINE," located the 7th day of February, 1899, the preliminary notice of location being of record in Book 15, at page 250, and the completed notice of location in Book 16, at page 54, Miscellaneous Records of said County;

5. That certain quartz mining claim or location known as the "IMPERIAL MINE," located the 7th day of February, 1899, the preliminary notice of location being of record in **[139—106]** Book 15, at page 246, and the completed notice of location in Book 16 at page 51, Miscellaneous Records of said County.

6. That certain quartz mining claim or location

known as the "PINE CRAG MINE," originally located the 27th day of February, 1899, notice thereof being of record in Book 15 at page 417, Miscellaneous Records of said County and relocated the 15th day of April, 1899, notice thereof being of record in Book 16, at page 135, Miscellaneous Records of said County;

7. That certain quartz mining claim or location known as the "RED GOSSON MINE," located the 15th day of April, 1899, notice thereof being of record in Book 16, at page 139, Miscellaneous Records of said County;

8. That certain quartz mining claim or location known as the "WEST EUREKA MINE," located the 7th day of February, 1899, preliminary notice of location being of record in Book 15 at page 253, and completed notice of location being of record in Book 16 at page 49, Miscellaneous Records of said County;

9. That certain quartz mining claim or location known as the "JOSEPHINE MINE," located the 26th day of March, 1900, notice of location thereof being of record in Book 20, at page 40, Miscellaneous Records of said County;

10. That certain quartz mining claim or location known as the "DOROTHEA MINE," located the 8th day of February, 1905, notice of location thereof being of record in Book 29 at page 208, Miscellaneous Records of said County; and **[140—107]**

11. That certain quartz mining claim or location known as the "JUMBO QUARTZ CLAIM," located the 8th day of February, 1905, notice of location

thereof being of record in Book 29, at page 206, Miscellaneous Records of said County.

Reference being hereby expressly made to said records of the County of Shasta for a more particular description of said mines and mining claims.

TOGETHER with all the dips, spurs and angles and also all the metal, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appenddant or appurtenant or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining and the rents, issues and profits thereof.

IT IS UNDERSTOOD, AGREED AND COVENATED between the parties hereto that the length of the option shall extend for eighteen months from the first of May, 1907, until the first day of November, 1908.

That the agreed price that the party of the second part shall pay and on receipt of which the party of the first part will deliver a good and sufficient deed of said property to the party of the second part, is the sum of eighty-five thousand (85,000) dollars, gold coin of the United States of America.

That the time and place for the delivery of said deed and the payment of said purchase price, if no other time and place shall be otherwise agreed upon in writing between **[141—108]** the parties shall be the 30th day of October, 1908, at twelve o'clock noon, at the office of the Bank of Shasta County, which bank is now located at Redding, California.

That in the meantime and subsequent to the execution and delivery of this agreement, the party of the second part shall have a license, which it is understood and agreed is not, however, a lease or an interest in the real estate itself, to enter in and upon said premises and permit its employees so to do, until such time, and until such time only, as the party of the second part shall fail for any reason to live up to the terms of this agreement to be performed on its part, or the party of the second part shall fail for any reason in the covenants and conditions herein provided for it or its agents to be performed.

That the purposes for which the party of the second part shall exercise the license of using said premises shall be only for conducting exploration and development work and to mine and extract ore therefrom under this option and agreement and which shall be done in a good and miner-like fashion.

IT IS FURTHER AGREED that the party of the second part shall have the right to reduce, smelt or otherwise dispose of, any ore produced from the herein described mines or mining claims, but said ores or their proceeds shall nevertheless remain at all times the property of the party of the first part, the net amount thereof or therefrom to be accounted for to the party of the first part by the party of the second part, and by the party of the second part to be deposited **[142—109]** meanwhile with the Bank of Shasta County; and with such deposit shall be filed a true and correct statement of said reduction or disposition of ores and in addition thereto,

or as a monthly summary thereof, a statement shall be filed by the party of the second part with the Bank of Shasta County, on or before the last day of each and every month commencing with the month of June, 1907, and if no ore shall have been reduced, that a statement to that effect shall be filed as of such date and each and every month thereafter.

The statement, if any ores are reduced or otherwise disposed of, shall show the amount thereof in gross; the cost of mining, transporting and reducing said ores and the cost of marketing the metals recovered. That during the period between the execution of this agreement and the time that the party of the second part shall fail to live up to the terms of this agreement, so far as the same shall be assumed by it, or until such a time as the party of the second part shall receive a deed as aforesaid from the party of the first part, all moneys and ores or the net proceeds of ores so received shall be the property of the party of the first part, but upon the delivery of a deed by the party of the first part, in accordance with the terms of this agreement, then said money and ores shall be paid over and delivered to the party of the second part, and applied on the purchase price for these properties, but not until that time shall the party of the second part have legal title thereto, and if the party of the second part elects to forfeit under this option, or shall fail to carry out and perform the conditions thereof, then all such money and ores shall be paid and delivered **[143—110]** at once by the Bank of Shasta County

to the party of the first part, or its successors or assigns.

That as a modification to the last preceding paragraph, it is understood and agreed that the party of the second part shall have the right to remove a necessary amount of ore, and only a necessary amount, from the property of the party of the first part, to a smelter for testing purposes, and such ore, which is assumed to be of a small and insignificant amount in intrinsic value, shall be without a condition that the proceeds thereof are to be deposited with said bank.

That the said party of the second part will give to the party of the first part, or its legal representative or representatives a reasonable opportunity to verify the correctness of any statements filed with said Bank or provided for under the terms of this agreement and to that extent, or a necessary extent, to verify the correctness of said statements, the party of the first part may examine the books of the party of the second part.

That the party of the second part agrees that at all times during the continuance of this option, it will not cause or permit any interference to occur on the property herein described or referred to, to hinder or prevent a representative of the party of the first part at any and all times having access to all parts of the mine or mines or mining claims, and will furnish ample opportunity to the party of the first part to take samples of any and all ores exposed therein and the workings thereof, including drill cores, provided

a diamond or core drill is used in exploratory work. [144—111]

IT IS FURTHER UNDERSTOOD AND AGREED by the parties hereto that the party of the second part beginning at a time fixed as of the 15th day of May 1907 and thereafter during the term of this option, will keep not fewer than eight able-bodied mining men employed on exploration and development work on or about the premises described herein and at work thereon, unless by reason of labor troubles, for which the party of the second part is not responsible, or other absolutely unavoidable circumstances, meaning thereby circumstances that no one could reasonably avoid or prevent; and in such event of said labor troubles or such unavoidable circumstances, it is hereby agreed that there may be a thirty days' suspension of this clause in the agreement without causing a forfeiture of the terms and conditions thereof. But if with these exceptions, and limited to said thirty days, less than eight able-bodied mining men shall be kept continuously employed as aforesaid, then all rights of the parties of the second part under the terms of this agreement and all rights under this option shall cease, and it is understood, agreed and stipulated that time is to be taken as a material element and consideration in the observance and construction of the provisions in this agreement contained.

The party of the second part further agrees to keep up, do and perform, or cause to be kept up, done and performed, at its own cost and expense, all annual assessment work, by law required to be done and per-

formed upon the said mining claims herein mentioned, and to commence the same and furnish proper certificates thereof and therefor to the Bank of Shasta County for account of the party of the first part, [145—112] and to have proofs of labor so done, verified and filed in the office of the County Recorder of Shasta County, California, on or before the 30th day of October in each year during the life of this option, which said proofs shall be made for the party of the first part, and as made by its request.

That should said party of the second part on or before said 30 day of October 1907, and the 30th day of June 1908, fail to have secured said proof of labor for said respective years, and to have had the same verified and properly filed as aforesaid, then the said party of the first part shall have the right to cause the same to be done as the agent and for the account of the party of the second part and the expense thereof shall become a charge against the said party of the second part, to be paid or repaid by the said party of the second part on demand to the parties so performing the labor, or who shall furnish the money or credit therefor.

IT IS UNDERSTOOD AND AGREED that the party of the second part shall not have authority, permission, right or title to suffer or to permit any charge, lien or claim to be laid, imposed or filed against the property herein mentioned, and the party of the second part does covenant and agree with the party of the first part that no charge, lien or claim

shall be laid, imposed or filed against the property herein mentioned, or any portion thereof for any work done, performed or improvements constructed, made or attempted, or materials or supplies purchased, sold, delivered or furnished or otherwise placed on said premises by or at the request of the party of the second part or anybody acting in its name for [146—113] its interests, or attempting to act in pursuance of any authority granted under the terms of this agreement.

IT IS FURTHER UNDERSTOOD AND AGREED between the parties hereto that if at any time during the life and continuance of this option, the said party of the second part shall elect to apply for and secure a United States Patent for mining claims or any of them herein mentioned, then said party of the second part may apply for and secure said patent at its own charge, cost and expense, but in the name of the party of the first part, and the party of the second part covenants and agrees that it will pay all government, land office and other fees in connection with any application for a United States Patent that may be made during the life of this option by it or on its behalf, and said party of the first part agrees to sign, execute and verify, or cause to be signed, executed and verified for the said party of the second part, so far as it lies within its power, all such papers as may in such patent proceedings be necessary, and to instruct its representatives at the cost and expense of the party of the second part, however, to appear and give evidence in

respect thereto if necessary.

That so long as the party of the second part shall faithfully perform in every particular the covenants and agreements herein contained and referred to, the party of the first part will not interfere with the use of said premises as provided for in this agreement, but, in the event that the party of the second part shall fail for thirty days to perform any of the covenants herein provided for to be by it performed, then all rights and privileges of the **[147—114]** said party of the second part under this option shall be forfeited, cease and terminate at the election of the party *of the party* of the first part, and with the distinct understanding and agreement that a failure to enforce any such right or the waiver of any right or forfeiture, shall not be deemed or accepted as a precedent or a waiver of the party of the first part thereafter to avail itself strictly of its rights under the terms and conditions hereof.

IT IS AGREED AND UNDERSTOOD that as liquidated damages, the party of the second part agrees with the party of the first part, that in case of default, forfeiture or failure to live up to the terms and agreements herein provided for on behalf of the party of the second part, all payments made by the party of the second part theretofore and all cars, tracks, blacksmith outfits, improvements and buildings of every kind placed on said premises by the party of the second part shall be forfeited to the party of the first part and shall become its absolute property, and the party of the first part shall at once be entitled to the possession thereof and all right, title

and interest of the party of the second part therein shall cease and terminate.

IT IS FURTHER UNDERSTOOD AND AGREED that this agreement is intended to be strictly a personal agreement between the parties themselves with each other and not intended that the confidence vested by one in the other may be assigned or substituted, provided only that it is agreed that the party of the second part may assign this option and agreement upon the payment of Fifteen Thousand Dollars in cash to the party of the first part, by depositing the same with the Bank of Shasta [148—115] County at Redding, California, to be paid to the party of the first part, but that such payment is to be considered only a payment for the option and the right of assignment thereof, and not otherwise. In the event of any such assignment, this agreement shall have the same binding effect upon any assignee who shall assume all obligations hereof, without however releasing the party of the second part from its obligations therefor, and all of its obligations hereunder.

The party of the second part as a matter of detail in connection with the performance of the terms of this agreement does further promise that it will give immediate notice in writing, of any strike or unavoidable accident, and facts sufficient to be verified by the party of the first part as to the fairness of the conclusion that the party of the second part is prevented under the terms of this agreement from carrying out its terms, covenants and provisions, and that such

notice shall be delivered to said Bank of Shasta County.

The party of the second part will see that all shaft and permanent openings which it shall make, shall be properly timbered and that the openings shall be kept clear of all debris, material and rubbish.

That party of the second part will make itself responsible to store all valuable ore mined, which is of too low a grade or quality to justify working or shipping the same under the facilities then available, and will not permit any unnecessary or avoidable waste thereof.

IT IS UNDERSTOOD AND AGREED that this contract is not a lease and bond on this property, but only a license and option in relation to the purchase thereof. **[149—116]**

The party of the second part hereby assumes any and all responsibility in case of any accident to any of the employees, officers, strangers, or persons who shall be upon the premises referred to herein, and promises and agrees to hold and save the party of the first part harmless from all damage or expense in relation thereto.

The party of the second part shall have the further right or privilege to discount the purchase price provided for in this option by the payment of fifty thousand (50,000) dollars in cash, together with the payment of the commissions due M. E. Dittmar of five thousand (5,000) dollars and provided this privilege or discount is exercised by the party of the second part in the manner following, that is to say: That the party of the second part shall, not later than the 15th

day of July 1907, notify Hatch & Clute, attorneys for the party of the first party by wire of its intention thereof, and confirm said wire by depositing in the United States Mail not later than the 15th day of July 1907, a written notification addressed to the Phoenix Securities Company, care of Hatch & Clute, 100 Broadway, New York City, and in said letter of confirmation state where and when in the City of New York, before the first day of August 1907, a good and sufficient deed of said property may be delivered and fifty thousand (50,000) dollars in cash paid to the party of the first part therefor; and at the same time pay to the Bank of Shasta County, at Redding, California, the commissions due the said M. E. Dittmar, unless the same shall have been satisfactorily arranged in writing with the said M. E. Dittmar.
[150—117]

Or at the election of the party of the second part, as evidenced by said written confirmation and notice to the party of the first part, provide for the deposit of the fifty thousand (50,000) dollars in the city of New York, payable to the party of the first part in addition to the commissions to be paid the said M. E. Dittmar, and upon delivery to the party of the second part of said deed at the Bank of Shasta County, in Redding, California, but in which latter event the party of the second part shall enclose with said notice a proposed form of deed which will be satisfactory to the party of the second part, for submission to the party of the first part any time to have a proper deed executed and sent to California before the date fixed for closing the title to said property.

The party of the second part agrees that upon failure to comply with the terms of this agreement, or to avail itself of the option herein contained, the party of the second part will execute any and all papers necessary to demonstrate the absolute title to the property in the party of the first part, and of its claim against the world to interfere therewith, so far as anything has been done or suffered to be done under the terms of this agreement by the party of the second part, and will re-deliver or cause to be delivered to the party of the first part the mines or mining claims and the development work done thereon, and any ore extracted therefrom, and the net proceeds from any ore sold or disposed of, or on failure so to make good delivery of said property that the party of the first part may, as the agent of the [151—118] party of the second part cause the same to be done as though the party of the second part had lived up to the terms and provisions of this agreement in that respect, which it is understood is intended to provide that such premises and property shall be redelivered in good order and condition, and that all shafts, drifts, tunnels, raises, winzes and other permanent workings shall be thoroughly clear of all loose rock, rubbish and ready for immediate and continuous workings without demand or a further notice.

That all notices and statements to the party of the first part provided for herein, and which are not especially provided for as to the time and place of delivery, or in the event that it shall be deemed impracticable to fairly deliver a notice intended for the party of the first part so as to make the same prac-

tically effectual, may be delivered to Edward Sargent Hatch, as counsel for the party of the first part, at his office in the City of New York, New York, which now is at #100 Broadway, in said City.

And all notices to be delivered to the party of the second part may be addressed to it under the name as stated in this agreement, and posted in the United States Post Office, at said City of New York, or at Redding, California, or may be delivered in person to an officer of the party of the second part, if the same can be personally delivered. **[152—119]**

IN WITNESS WHEREOF, the parties to this agreement have executed the same in their corporation names by a proper officer authorized to execute the same, and has affixed or caused to be affixed the seal of the corporation, pursuant to authority under their several By-Laws and the Laws of the States under which they were severally organized, and as of the time and place above mentioned.

STAUFFER CHEMICAL CO.

CHR. DE *GINGNE,* President. (Seal)

JOHN STAUFFER, Secretary.

[153—120]

Defendant's Exhibit 19 [Letter, 12–27–'07, Hatch & Clute to Stauffer Chemical Co.].

March 27, 1912.

12–27–07.

Re Phoenix Securities Co.

Stauffer Chemical Co.,
San Francisco,
California.

This letter is dictated by our Mr. Hatch in the

presence of Mr. Reiff, the President of the Phoenix Securities Company, and your Mr. Adolph Kunze, and is intended to be a general confirmation of the agreement made between the Phoenix and the Stauffer companies for the purchase and sale of the Summit & Graves property, referred to in the existing contract between those companies.

It is distinctly understood that the phraseology of this letter is not intended to be technical or necessarily followed literally, but rather the intent of the agreement to be stated in general phraseology.

The existing contract is to be annulled and no claim made in favor of either party under it.

A corporation shall be organized promptly by us under the laws of such State as will, in our opinion be most useful for your company in connection with the purposes for which the company is organized and such company shall be organized so that stock it shall issue in payment for the property in question shall be full **[154—121]** paid, non-assessible and without any liability whatsoever to the holder thereof and we are expected to certify to that condition when we turn over to you the stock of the company.

As to who shall pay the whole, or a portion of the expense of the organization of this company, which will really be for your benefit, or when the payment shall be made, are questions to be taken up in all fairness and equity between us.

This corporation shall own the property in question absolutely and the management of it shall be entirely with your company, and the interest of the Phoenix Company in the matter shall be only that of

a creditor of this dummy company.

The dummy company will make the agreement, in fact and in law, that has been practically agreed upon between us, as evidenced by Mr. Kunze's telegram to you of December 21st, and your answer to him of December 26th, with the slight modifications in form hereafter referred to in this letter.

This dummy company will pay for the property in question by the issuance of its entire capital stock, outside of those shares that must be issued for cash, to comply with the laws of the State where it is incorporated. The amount of the capital stock of the company can be any reasonable amount that you will designate, but of course it must not be very much in excess of the real consideration, so far as you make us responsible for the stock being fully paid. [155—122]

Furthermore, you understand that in many States the larger you make your capital the more it costs and it would not be right for you to make the Phoenix Company pay for capital stock which would be entirely for your interest and not of any possible benefit to them. It is really those questions to which I have particular reference above, where I state I think perhaps the expense of the company should be borne by you, but I am sure we will agree on that proposition hereafter without any possible doubt.

Of course, no matter what you capitalize for, in the first instance, you can increase the capital to any amount you please and we can handle that for you with very little expense and on very short notice.

This dummy company will in payment for this

property and in addition to its stock, pay $37,500 in its bonds and in addition will make an agreement to pay a royalty of fifty cents a ton on the product of the mine, which is to be defined in such manner as will be agreeable all around; that is whether it will be fifty cents per ton mined or shipped, or whatever legal phraseology shall be considered as fairly representing fifty cents a ton on the products of the mine.

The $37,500 in bonds of this dummy company are to be payable in addition to $2,500 in cash which the Stauffer Company pays at this time to bind the proposition, as follows: [156—123]

$2,500 in sixty days,
$2,500 in four months,
$2,500 in six months,
$5,000 in one year,
$10,000 in two years, and
$15,000 in three years.

Of the $40,000 which the Phoenix Company is to receive in cash or bonds, in addition to the fifty cents royalty agreement, the Stauffer Company pays the $2,500 in cash and issues its obligation in some form to be agreed upon, in substance guaranteeing the payment to the Phoenix Company of an amount, all told, of $25,000 plus the fifty cents royalty agreement.

The Stauffer Company shall not be liable legally, equitably or indirectly for the payment of the $15,000 of bonds provided for in three years.

The bonds falling due after six months or in excess of the $10,000 so-called cash payment, which is to be made within six months, shall draw interest

at such per cent. as the Phoenix Company may decide will most benefit them, but with the understanding that any interest that is paid on these bonds is to diminish the final payment the Stauffer Company is liable to make, which, including interest, limited to $25,000 so far as they are concerned, as distinguished from the nominal liability of the dummy company itself.

The theory of this agreement between the dummy company and the Phoenix Company, as distinguished from the legal phraseology of it, is that if the property in question **[157—124]** is what the buyer and seller believe it to be, the buyer is perfectly satisfied that the seller shall have his $85,000 out of the property, but is unwilling to involve itself (that is, the Stauffer Company) in any liability beyond the $25,000 in addition to what they have seen fit to invest in the matter already, and if they want to abandon the proposition after they have paid this $25,000, they want to feel at liberty to throw up the entire undertaking without any criticism or question as to their liability in the matter, and then the Phoenix people can secure what they think is in the ground, if they see fit to try to collect their bonds out of the dummy company.

I also understand that this undertaking may involve you in an investment at the end of three years, which would be so substantial that you would feel like asking an extension of time on the payment of the bonds that are due by the dummy company in three years, and although we do not pretend to make a legal agreement to nullify another agreement, we

do state that it is understood such an application shall be considered by our people with favor, as it would contemplate your spending more money on the property which would give our people a greater chance of realizing on their royalty agreement.

It is likewise understood by the Phoenix people that you are not called upon to work this property in any definite way, time or manner and that they shall rely on your reputation and their experience with you as to fair dealing and your financial ability and business methods, that when in your judgment it is to your interests and the interest of the **[158—125]** property to progress the work it will be progressed, and in the meantime the Phoenix Company shall have no right to interfere with your judgment in that respect.

We understand that so far as you place any portable machinery on the property of the company, or have placed any there, that it shall remain the property of the Stauffer Company, so far as the Phoenix people are concerned. But as to any other investment that you make in working this property, as for instance for labor and supplies or for timbering, such investment should not operate as an obligation of the company that could have preference over the bonds of the company that are given to the Phoenix Company and where you are not liable thereon.

The form of the protection in favor of the Phoenix Company, as against the Stauffer Company, in respect to this matter, will be agreed upon between us hereafter.

It will not be practicable for us to submit the papers that we prepare to carry out this agreement, but we will agree that the papers shall comply with our mutual understanding and if your lawyer, when we submit everything to him, can find any material variation, we will keep the meetings of this so-called dummy company open so that the phraseology can be corrected to comply with his desires and wishes and yours. **[159—126]**

Of course, so far as your own individual liability is concerned, naturally that will not occur except as to the first $2,500 until the papers are submitted to you to sign, so of course you will have full opportunity to approve of them before you sign them, but as your lawyer will understand, the details of the organization and the By-Laws and those sort of things are matters that are not susceptible to submission at a distance of two or three thousand miles, but our experience in such matters is so extended you can be certain we will carry out everything you and your legal advisers require.

If this letter is in substance your understanding, wire us immediately and we will start the matter going. If it is not clearly in accordance with your understanding then you can await Mr. Kunze's arrival, which perhaps will be in a day or two later. You can wire us the $2,500 as soon as you are satisfied with our mutual understanding of the matter.

We remain, gentlemen,

Faithfully yours,

(Sgd.) HATCH & CLUTE.

The foregoing was all of the evidence in the case. **[160—127]**

The cause was thereupon after argument submitted to the Court for decision and judgment and thereafter and on August 26th, 1914, the Court ordered judgment to be entered in favor of plaintiff and against defendant for the sum of five thousand dollars ($5,000) and costs of suit and judgment accordingly was entered upon said day.

And now comes defendant and excepting to said order and judgment proposes this, its bill of exceptions thereto, and prays that the same may be settled and allowed.

Dated this 29th day of October, A. D. 1914.

L. A. REDMAN,
Attorney for Defendant.

[Stipulation Re Settling of Bill of Exceptions.]

It is hereby stipulated and agreed that the foregoing bill of exceptions is correct and that the same may be settled, approved and allowed as engrossed.

MORRISON, DUNNE & BROBECK,
MORRISON & BROBECK,
Attorneys for Plaintiff.
L. A. REDMAN,
Attorney for Defendant.

[Order Settling, etc., Bill of Exceptions.]

The settlement of the foregoing bill of exceptions having been regularly continued to the present term of court and said bill of exceptions being now presented in due time and found to be correct, the same is hereby settled, approved and allowed.

Dated November 17th, A. D. 1914.

WM. C. VAN FLEET,
U. S. District Judge.

[Endorsed]: Filed Nov. 17, 1914. Walter B. Maling, Clerk. [161]

In the District Court of the United States, in and for the Northern District of California.

M. E. DITTMAR,

Plaintiff,

vs.

PHOENIX SECURITIES COMPANY (a Corporation),

Defendant.

Petition for Writ of Error.

The Phoenix Securities Company, a corporation, defendant above named, feeling itself aggrieved by the judgment rendered herein in favor of the said plaintiff on August 26th, A. D. 1914, whereby it was adjudged that plaintiff have and recover from the defendant the sum of five thousand dollars ($5,000) and costs of suit taxed at the sum of fifty-eight dollars and twenty cents ($58.20), comes now by L. A. Redman, its attorney, and petitions said Court for an order allowing it, said defendant, to prosecute a writ of error to the United States Circuit Court of Appeals, in and for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided; also that an order be made fixing the amount of a bond for costs which the

said defendant shall give and furnish upon said writ of error.

And your petitioner will ever pray, etc.

PHOENIX SECURITIES COMPANY,
By L. A. REDMAN,
Its Attorney.

[Endorsed]: Filed Oct. 24, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [162]

In the District Court of the United States, in and for the Northern District of California.

M. E. DITTMAR,
Plaintiff,

vs.

PHOENIX SECURITIES COMPANY (a Corporation),
Defendant.

Assignment of Errors.

Now comes Phoenix Securities Company, a corporation, the defendant in the above-entitled action, by L. A. Redman, Esq., its attorney, and specifies the following as errors upon which it will urge its writ of error in the above-entitled action, namely:

1. That the said Court erred in rendering judgment in favor of plaintiff for the sum of five thousand dollars ($5,000), or any other sum; and erred in not rendering judgment in favor of defendant.

2. That the evidence is insufficient to justify the implied finding of the Court that defendant authorized plaintiff to find a purchaser for the property

referred to in the fourth amended complaint; and is insufficient to justify the implied finding that defendant agreed to pay to plaintiff for his services in furnishing such purchaser any amount in excess of the sum of seventy-five thousand dollars ($75,000) paid by such purchaser for said property and is insufficient to justify the implied finding that plaintiff did at any time discover a prospective purchaser of such property who was willing to or did agree to purchase said property for the sum of eighty-five thousand dollars ($85,000) or any other sum upon any terms whatever.

3. That the evidence is insufficient to justify the [163] implied finding that on or about February 1, 1908, or at any time said defendant and the Stauffer Chemical Company referred to in said complaint did arrange terms of payment of the sum of eighty-five thousand dollars ($85,000) for the property referred to in said complaint satisfactorily to defendant and said Stauffer Chemical Company.

4. That the evidence is insufficient to justify the implied finding that pursuant to said alleged sale and purchase or either thereof the defendant did sell and convey or sell or convey to said Stauffer Chemical Company said property or any part thereof.

5. That the evidence is insufficient to justify the implied finding that said Stauffer Chemical Company has fully or at all complied with all or any of the alleged terms and conditions or either thereof of said alleged sale.

6. That the evidence is insufficient to justify the implied finding that upon the completion and con-

summation or completion or consummation of said alleged sale there became due and payable or due or payable to plaintiff the sum of ten thousand dollars ($10,000) or any other sum.

7. That the evidence is insufficient to justify the implied finding that defendant authorized plaintiff to find a purchaser of the property referred to in the complaint who would be ready, willing and able or either thereof to purchase the said property therein referred to upon such terms and conditions as might be agreed upon between defendant and such prospective purchaser.

8. That the evidence is insufficient to justify the implied finding that on or about February 1, 1908, or at any time defendant did sell and convey or either thereof to the said Stauffer Chemical Company the property referred to in the complaint for the sum of eighty-five thousand dollars ($85,000) [164] or any other sum.

9. That the evidence is insufficient to justify the implied finding that the said Stauffer Chemical Company has paid said sum of eighty-five thousand dollars ($85,000) to the defendant or will pay said sum to defendant for said property or will in any event or under any circumstances pay in excess of the sum of sixty-six thousand dollars ($66,000) for said property.

10. That the evidence is insufficient to justify the implied finding that plaintiff did expend much or any time, skill or money or either thereof in and about or in or about the work and services or either thereof rendered to defendant in the securing of said Stauf-

fer Chemical Company as a purchaser for the aforesaid property.

11. That the evidence is insufficient to justify the implied finding that said Stauffer Chemical Company was secured as a purchaser for said property solely or at all through the labor, services, skill and expenditures or either thereof of plaintiff.

12. That the evidence is insufficient to justify the implied finding that the reasonable or any value of the said alleged work, services, skill and expenditures or either thereof of the plaintiff is the sum of ten thousand ($10,000) or any other sum.

13. That the evidence is insufficient to justify the implied finding that the plaintiff has duly or at all performed all or any of the conditions and terms or either thereof required on his part to be performed in and by or in or by the alleged terms of said alleged authorization and agreement or either thereof.

14. That the evidence is insufficient to justify the implied finding that defendant agreed to pay to the plaintiff [165] ten per cent of such sum of money as the defendant might receive in cash and money or either thereof on account of the sale to such prospective purchaser of the said property.

15. That the evidence is insufficient to justify the implied finding that on May 1, 1907, or at any time plaintiff did discover a prospective purchaser for said property and did introduce and bring or introduce or bring to defendant such prospective purchaser or either thereof.

16. The evidence is insufficient to justify the im-

plied finding that said alleged prospective purchaser was willing, able and ready or either thereof to purchase said property for the sum of eighty-five thousand dollars ($85,000) or any other sum.

17. That the evidence is insufficient to justify the implied finding that said alleged purchaser did agree to purchase said property and to pay therefor the sum of eighty-five thousand dollars ($85,000) or any other sum or either thereof.

18. That the evidence is insufficient to justify the implied finding that defendant has received from said Stauffer Chemical Company the sum of forty thousand dollars ($40,000) in cash and money or either thereof paid prior to the date of filing said complaint.

19. That the evidence is insufficient to justify the implied finding that the alleged balance of forty-five thousand dollars ($45,000) is due and payable or either thereof out of the smelter returns which are to arise from the working and operation of said property or either thereof.

20. That the evidence is insufficient to justify the implied finding that said alleged balance will be paid in future according to the terms and conditions or either thereof [166] of a certain instrument dated February 5, 1908, between defendant and the Summit Copper Company or at all.

21. That the evidence is insufficient to justify the implied finding that said Summit Copper Company did undertake to pay said alleged balance of forty-five thousand dollars ($45,000) on account of said al-

leged purchase price in the manner stated in said complaint or at all.

22. That the evidence is insufficient to justify the implied finding that ten thousand dollars ($10,000) on account of said forty-five thousand dollars ($45,-000) has been paid, leaving a balance of thirty-five thousand dollars ($35,000) more or less or any other sum.

23. That the evidence is insufficient to justify the implied finding that defendant has received the sum of fifty thousand dollars ($50,000) more or less on account of the purchase price of said property.

24. That the evidence is insufficient to justify the implied finding that the said Stauffer Chemical Company and the said Summit Copper Company have fully or at all complied with all the terms and conditions of said sale or that either of said companies has complied with any of the alleged terms and conditions or either thereof of said sale.

25. That the evidence is insufficient to justify the implied finding that upon the completion and consummation or either thereof of said sale, and, or, of the alleged subsequent payment of said sum of fifty thousand dollars ($50,000) more or less there became due and payable or due or payable to the plaintiff the sum of five thousand dollars ($5,000) or any other sum.

26. That the evidence is insufficient to justify the implied finding that said sum of five thousand dollars ($5,000) [167] or any part thereof is or was due, owing and unpaid by defendant to plaintiff, or due or owing or unpaid by defendant to plaintiff.

27. That the evidence is insufficient to justify the implied finding that plaintiff has duly or at all performed all or any of the conditions and terms or either thereof required on his part to be performed in and by or in or by the alleged terms of said alleged authorization and agreement or either thereof.

28. The Court erred in overruling defendant's objection to the following question propounded to the plaintiff:

"Assuming the fact you stated with regard to the nature of these properties and their accessibility and the nature of the agreement which you originally had with the Phoenix Securities Company and the sale that was finally consummated, what in your opinion would be the reasonable value of your services in bringing about the final consummation of the deal?"

29. The Court erred in overruling defendant's objection to the following question propounded to the witness Lane:

"I will ask you, Mr. Lane, what, in your opinion, would be the reasonable value of the services of a mining broker in effecting the sale of about 20 or 25 full-sized mining claims in the northern part of this State, and more particularly in Shasta County, the ore in the properties being principally copper, and the properties not being on the railroad, but about seven miles off, and connected with the railroad partly by wagon road and partly by trail; the properties being sold by the broker, or rather, a contract being entered into originally by the broker, for a purchase price of $85,000 on an eighteen months' contract, with an option that they might be taken in

three months' time, for $50,000 cash, which agreement was subsequently modified by another agreement by which agreement the sellers secured $2,500 cash at the time that the substituted [168] agreement was entered into, and $33,500 in bonds and $15,000 in cash, making a total of $51,000 with $15,000 remaining unpaid at the time that the broker made a claim for the reasonable value of his services?"

30. The Court erred in overruling defendant's objection to the following question propounded to the witness Lane:

"And also, Mr. Lane, disregarding the particulars of the agreement, that I embodied in the previous question, and bearing in mind simply the nature of the properties that I described, namely, that there were a number of full-sized mining claims, bearing copper ore principally, in the northern part of the State and situated, as I have stated before, what, in your opinion, would be the reasonable value of the services of a broker in securing the sale of those properties, what percentage?"

WHEREFORE, said defendant prays that the judgment in said action in favor of the plaintiff therein be reversed and a new trial of said action be ordered.

L. A. REDMAN,
Attorney for Defendant.

[Endorsed]: Filed Oct. 24, 1914. W. B. Maling, Clerk. J. A. Schaertzer, Deputy Clerk. [169]

In the District Court of the United States, in and for the Northern District of California.

M. E. DITTMAR,

Plaintiff,

vs.

PHOENIX SECURITIES COMPANY (a Corporation),

Defendant.

Order Allowing Writ of Error [and Fixing Amount of Bond].

Upon motion of L. A. Redman, attorney for the defendant in the above-entitled action and upon the filing of the petition for writ of error and assignment of errors,

IT IS ORDERED that a writ of error as prayed for in said petition be allowed and that the amount of the bond for costs to be given by defendant upon said writ of error be and the same is hereby fixed at the sum of five hundred dollars ($500).

Dated October 24, 1914.

M. T. DOOLING,
U. S. District Judge.

[Endorsed]: Filed Oct. 24, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [170]

In the District Court of the United States, in and for the Northern District of California.

No. 14,982.

M. E. DITTMAR,

Plaintiff,

vs.

PHOENIX SECURITIES COMPANY (a Corporation),

Defendant.

Bond.

KNOW ALL MEN BY THESE PRESENTS, That we, PHOENIX SECURITIES COMPANY, as principal, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, duly authorized to transact the business of indemnity and suretyship in the State of California, and having an office and principal place of business for the State of New York at No. 2 Rector Street, in the Borough of Manhattan, in the City of New York, as Surety, are held and firmly bound unto M. E. DITTMAR in the sum of FIVE HUNDRED DOLLARS ($500), lawful money of the United States, to be paid to the said M. E. DITTMAR, his heirs, executors, administrators and assigns; to which payment, well and truly to be made, we bind ourselves and each of us, our respective successors and assigns, jointly and severally, firmly by these presents.

SEALED with our seals. Dated this second day of October nineteen hundred and fourteen.

WHEREAS, the above-named PHOENIX SECURITIES COMPANY has prosecuted a writ of Error to the United States Circuit Court of Appeals, Ninth Circuit, to reverse the judgment herein of the United States District Court for the Northern District of California rendered against defendant and in favor of plaintiff.

NOW, THEREFORE, the condition of this obligation is such, that if the above-named PHOENIX SECURITIES COMPANY shall prosecute [171] its said writ of error to effect, and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

[Seal Phoenix Securities Co.]

PHOENIX SECURITIES COMPANY,
By H. CUMISKEY,
Sec. and Treas.

[Seal Fidelity & Deposit Co. of Maryland.]

FIDELITY AND DEPOSIT COMPANY OF MARYLAND.
By HUGH M. ALLWOOD,
Attorney in Fact.
Attest: JAMES R. KINGSLEY,
Attorney in Fact.

State of New York,
County of New York,—ss.

On the 5th day of October, in the year 1914, before me personally came H. Cumiskey, to me known, who being by me duly sworn did depose and say that he resides in Brooklyn, N. Y.; that he is the Secretary and Treasurer of the Phoenix Securities Company,

the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

[Seal] WALTER F. WELCH,
Notary Public, Queens County.

Certificate filed in New York County, No. 5 New York County Register's No. 5047. Commission Expires March 30, 1915. [172]

State of New York,
County of New York,—ss.

On the 2d day of October, in the year 1914, before me personally came Hugh M. Allwood, to me known, who, being by me duly sworn, did depose and say, that he resides in the City of New York; that he is the Attorney in Fact of the Fidelity and Deposit Company of Maryland, the corporation described in, and which executed the within instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and that the Fidelity and Deposit Company of Maryland has been duly authorized to transact business in the State of New York, in pursuance of the statutes in such case made and provided; and that the liabilities of said Company do not exceed its assets as ascertained in the manner provided in Section 183, of the Insurance Law, con-

stituting Chapter 33, of the Consolidated Laws of the State of New York. And the said Hugh M. Allwood further said that he is acquainted with James R. Kingsley and knew him to be the Attorney in Fact of said Company; that the signature of the said James R. Kingsley subscribed to the within instrument, was in the genuine handwriting of the said James R. Kingsley and was subscribed thereto by like order of the Board of Directors, and in the presence of him, the said Hugh M. Allwood.

[Seal] F. A. MASSEY,

Notary Public, New York County, No. 2395.

At a regular meeting of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, held in its office in the City of Baltimore, State of Maryland, on the 4th day of October, 1911, the following resolution was unanimously adopted: [173]

"RESOLVED, That Henry B. Platt, Vice-President, James R. Kingsley, Attorney, Frank H. Platt, Edward T. Platt, Joseph A. Flynn, Hugh M. Allwood, Charles V. R. Marsh, Ernest L. Hicks and Frank A. Eickhoff, all of the City of New York, State of New York, be and each of them is, hereby appointed Attorney in Fact of this Company and empowered to execute and deliver and attach the seal of the Company to any and all bonds or undertakings for or on behalf of this Company, in its business of guaranteeing the fidelity of persons holding places of public or private trust and the performance of contracts other than insurance policies, and executing or guaranteeing bonds or undertakings required

or permitted in all actions or proceedings, or by law required, permitted or allowed.

"Such bonds or undertakings to be executed for the Company by any one of the said Henry B. Platt, James R. Kingsley, Frank H. Platt, Edward T. Platt, Joseph A. Flynn, Hugh M. Allwood, Charles V. R. Marsh, Ernest L. Hicks or Frank A. Eickhoff, and to be attested in every instance by one other of the said Attorneys in Fact, as occasion may require."

County of New York,—ss.

I, James R. Kingsley, Attorney in Fact of the Fidelity and Deposit Company of Maryland, have compared the foregoing Resolution with the original thereof, as recorded in the Minute-book of said Company, and DO HEREBY CERTIFY that the same is a true and correct transcript therefrom, and of the whole of the said original Resolution. Given under my hand and the seal of said Company, at the City of New York, this 2d day of October, 1914.

[Seal Fidelity & Deposit Co.]

JAMES R. KINGSLEY,
Attorney in Fact. [174]

FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

STATEMENT—June 30, 1914.

Resources:		Liabilities:	
Home Office Building Charles and Lexington Streets	$2,375,000.00	Reserve for Unearned Premiums	$3,383,203.31
Other Real Estate, 214 N. Charles St., etc.	128,636.88	Reserve for Claims, Admitted and Unadmitted	1,950,777.50
Bonds and stocks	6,228,578.62	Reserve for Agents' Commissions	387,805.51
First Mortgage Loans	109,034.00	Reserve for Premium Taxes, & Expenses in Transit	173,972.68
Agents' Debit Balances, Gross (Surety)	805,338.02	Reserve for Liquidation of American Bonding Company.	82,206.24
Agents' Debit Balances, Gross (Casualty)	850,406.41	Reserve for Liquidation of Philadelphia Casualty Company	58,114.44
Bank Deposits for use of Branch Offices	99,991.45	Reserve for Unpaid Reinsurance Premiums	26,215.28
Cash in Banks and Trust Companies	1,133,122.16	Capital Stock $3,000,000.00	
		Surplus $2,000,000.00	
		Undivided Profits 667,812.58	
		Surplus to Policyholders	5,667,812.58
Total	$11,730,107.54	Total	11,730,107.54

State of New York,
County of New York,—ss.

James R. Kingsley, being duly sworn, says that he is the Attorney in Fact of the Fidelity and Deposit Company of Maryland; that the foregoing is a true and correct statement of the financial condition of said Company, as of June 30, 1914, to the best of his knowledge and belief, and that the financial condition of said Company is as favorable now as it was when such statement was made.

JAMES R. KINGSLEY.

Subscribed and sworn to before me, this 2d day of October, 1914.

[Seal] F. A. MASSEY,
Notary Public New York County. No. 2395 [175]

I approve of the within Bond and of the sufficiency of the surety therein.

Dated Oct. 24, 1914.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Oct. 24, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [176]

In the District Court of the United States, in and for the Northern District of California.

M. E. DITTMAR,

Plaintiff,

vs.

PHOENIX SECURITIES COMPANY (a Corporation),

Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS that the Phoenix Securities Company, a corporation, as principal and Fidelity and Deposit Company of Maryland, a corporation, as surety, are held and firmly bound unto the plaintiff in the above-entitled action, in the sum of five hundred dollars ($500), lawful money of the United States of America, to which payment well and truly to be made we bind ourselves and each of us jointly and severally and our and each of our successors, representatives and assigns firmly by these presents.

Sealed with our seals and dated this 23d day of October, A. D. 1914.

WHEREAS, the above-named defendant is about to sue out a writ of error in the United States Court of Appeals in and for the Ninth Circuit, to reverse the judgment entered in the above-entitled action in favor of the plaintiff therein and against the defendant therein for the sum of five thousand dollars ($5,000), and costs of suit amounting to the sum of fifty-eight dollars and twenty cents ($58.20).

NOW, THEREFORE, the condition of this obligation is such that if the above-named Phoenix Securities Company shall prosecute its writ of error to effect and answer all costs if it shall fail **[177]** to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

[Seal Fidelity & Deposit Co.]

FIDELITY & DEPOSIT CO. OF MD.
By GUY LEROY STEVICK,
Its Attorney-in-Fact.
Attest: ALFRED C. SKAIFE,
Agent.

PHOENIX SECURITIES COMPANY,
By L. A. REDMAN,
Its Attorney.

Approved October 24, A. D. 1914.
M. T. DOOLING,
U. S. District Judge.

[Endorsed]: Filed Oct. 24, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. **[178]**

UNITED STATES OF AMERICA.

District Court of United States, Northern District of California.

CLERK'S OFFICE.

No. 14,982.

M. E. DITTMAR,

vs.

PHOENIX SECURITIES COMPANY.

Praecipe [for Transcript of Record].

To the Clerk of said Court:

Sir: Please prepare transcript of Record on Writ

of Error to the United States Circuit Court of Appeals for the Ninth Circuit, as follows:

Fourth Amended Complaint;

Demurrer to Fourth Amended Complaint;

Order Overruling Demurrer to Fourth Amended Complaint;

Answer to Fourth Amended Complaint;

Waiver of Trial by Jury;

Judgment;

Bill of Exceptions;

Petition for Writ of Error;

Assignment of Errors;

Order Allowing Writ of Error;

Bonds on Writ of Error;

Original Writ of Error; and Original Citation.

L. A. REDMAN,
Attorney for Defendant.

[Endorsed]: Filed Nov. 24, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. **[179]**

In the District Court of the United States, in and for the Northern District of California, Second Division.

No. 14,982.

M. E. DITTMAR,

Plaintiff,

vs.

PHOENIX SECURITIES COMPANY (a Corporation),

Defendant.

Clerk's Certificate to Transcript of Record.

I, Walter B. Maling, Clerk of the District Court of the United States, do hereby certify the foregoing one hundred and seventy-nine (179) pages, numbered from 1 to 179, inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the praecipe for transcript of record, as the same remain on file and of record in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to Writ of Error is $99.60; that said amount was paid by L. A. Redman, Esq., attorney for defendant; and that the original Writ of Error and original Citation issued in said cause are hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 28th day of November, A. D. 1914.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern District of California.

By J. A. Schaertzer,
Deputy Clerk. **[180]**

[Writ of Error (Original).]

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, Second Division, Greeting:

Because, in the record and proceedings, as also in

the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between PHOENIX SECURITIES COMPANY (a Corporation), plaintiff in error, and M. E. DITTMAR, defendant in error, a manifest error hath happened, to the great damage of the said PHOENIX SECURITIES COMPANY (a Corporation), plaintiff in error, as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable EDWARD D. WHITE, Chief Justice of the United States, the 24th day of

October, in the year of our Lord one thousand nine hundred and fourteen.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern District of California.

By J. A. Schaertzer,
Deputy Clerk.

Allowed by
M. T. DOOLING,
United States District Judge.

Service of the within Writ of Error and receipt of a copy is hereby acknowledged this 24th day of October, 1914.

MORRISON, DUNNE & BROBECK,
Attorneys for Def. in Error.

The answer of the Judges of the District Court of the United States in and for the Northern District of California, Second Division.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal] WALTER B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk.

[Endorsed]: No. 14,982. United States District Court for the Northern District of California. Phoenix Securities Company, Plaintiff in Error, vs. M. E. Dittmar, Defendant in Error. Writ of Error. Filed Oct. 24, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [181]

[Citation on Writ of Error (Original).]

UNITED STATES OF AMERICA,—ss.

The President of the United States, to M. E. Dittmar, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California, Second Division, wherein PHOENIX SECURITIES COMPANY (a Corporation), is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable MAURICE T. DOOLING, United States District Judge for the Northern District of California, this 24th day of October, A. D. 1914.

M. T. DOOLING,
United States District Judge.

Service of the within citation on Writ of Error and receipt of a copy thereof is hereby acknowledged this 24th day of October, 1914.

MORRISON, DUNNE & BROBECK,
Attys. for Def. in Error.

[Endorsed]: No. 14,982. United States District Court for the Northern District of California. Phoenix Securities Company, Plaintiff in Error, vs. M. E. Dittmar, Defendant in Error. Citation on Writ of Error. Filed Oct. 24, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [182]

[Endorsed]: No. 2525. United States Circuit Court of Appeals for the Ninth Circuit. Phoenix Securities Company, a Corporation, Plaintiff in Error, vs. M. E. Dittmar, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Northern District of California, Second Division.

Filed November 28, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

PHOENIX SECURITIES COMPANY (a Corporation),

Plaintiff in Error,

vs.

M. E. DITTMAR,

Defendant in Error.

Order Extending Time to File Record on Writ of Error.

Good cause appearing therefor, it is ordered that the plaintiff in error in the above-entitled cause may have to and including December 1, 1914, in which to file and docket the transcript on appeal in the United States Circuit Court of Appeals.

Dated November 21, 1914.

WM. C. VAN FLEET,
United States District Judge

[Endorsed]: No. 2525. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Dec. 1, 1914, to File Record Thereof and to Docket Case. Filed Nov. 21, 1914. F. D. Monckton, Clerk. Refiled Nov. 28, 1914. F. D. Monckton, Clerk.